

STANDARD AGREEMENT

STD 213 (DHS Rev 7/06)

REGISTRATION NUMBER

AGREEMENT NUMBER

1. This Agreement is entered into between the State Agency and the Contractor named below:

STATE AGENCY'S NAME

(Also referred to as CDHS, DHS, or the State)

California Department of Health Services

CONTRACTOR'S NAME

(Also referred to as Contractor)

2. The term of this Agreement is: through

3. The maximum amount \$ of this Agreement is:

4. The parties agree to comply with the terms and conditions of the following exhibits, which are by this reference made a part of this Agreement.

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| Exhibit A – Scope of Work | 19 pages |
| Exhibit B – Budget Detail and Payment Provisions | 4 pages |
| Exhibit C * – General Terms and Conditions | GTC 307 |
| Exhibit D (F) – Special Terms and Conditions (Attached hereto as part of this agreement) | 26 pages |
| Exhibit E – Additional Provisions | 18 pages |
| Exhibit F – Contractor's Release | 1 page |
| Exhibit G – HIPAA Business Associate Addendum | 7 pages |

See Exhibit E, Provision 1 for additional incorporated exhibits.

Items shown above with an Asterisk (*), are hereby incorporated by reference and made part of this agreement as if attached hereto. These documents can be viewed at <http://www.ols.dgs.ca.gov/Standard+Language>.

IN WITNESS WHEREOF, this Agreement has been executed by the parties hereto.

CONTRACTOR

CONTRACTOR'S NAME (if other than an individual, state whether a corporation, partnership, etc.)

BY (Authorized Signature)

DATE SIGNED (Do not type)

PRINTED NAME AND TITLE OF PERSON SIGNING

ADDRESS

STATE OF CALIFORNIA

AGENCY NAME

California Department of Health Services

BY (Authorized Signature)

DATE SIGNED (Do not type)

PRINTED NAME AND TITLE OF PERSON SIGNING

Allan Chinn, Chief, Contracts and Purchasing Services Section

ADDRESS

1501 Capitol Avenue, Suite 71.2101, MS 1403, P.O. Box 997413
Sacramento, CA 95899-7413**California Department of
General Services Use Only**☐ Exempt per:

Exhibit A

Scope of Work

1. Service Overview

Contractor agrees to provide the California Department of Health Services (CDHS) the services described herein.

The Medi-Cal Workers' Compensation Recovery Program (WCRP) is responsible for the discovery and recovery of amounts owing by third parties for health care services provided by the Medi-Cal program for work-related illness or injury. Recoveries involve claims filed with employers, Workers' Compensation (WC) insurance carriers and/or the Workers' Compensation Appeal Board (WCAB). Title XIX of the Social Security Act requires state agencies to take all reasonable measures to determine the legal responsibility of a party or carrier as it relates to the payment of medical care arising out of work-related illness or injury. Welfare and Institution (W&I) Code section 14124.88 allows CDHS to contract out the WCRP.

2. Service Location

The State has two contract regions, Northern and Southern, that encompass 58 counties.

The 48 counties designated in the WCRP contract for the Northern California Region are: Alameda; Alpine; Amador; Butte; Calaveras; Colusa; Contra Costa; Del Norte; El Dorado; Fresno; Glenn; Humboldt; Inyo; Kings; Lake; Lassen; Madera; Marin; Mariposa; Mendocino; Merced; Modoc; Mono; Monterey; Napa; Nevada; Placer; Plumas; Sacramento; San Benito; San Francisco; San Joaquin; San Mateo; Santa Clara; Santa Cruz; Shasta; Sierra; Siskiyou; Solano; Sonoma; Stanislaus; Sutter; Tehama; Trinity; Tulare; Tuolumne; Yolo and Yuba.

The 10 counties designated in the WCRP contract for the Southern California Region are: Imperial; Kern; Los Angeles; Orange; Riverside; San Bernardino; San Diego; San Luis Obispo; Santa Barbara and Ventura.

CDHS has the option of deleting or transferring counties from one contract to another. See Exhibit E, section 13.C.

3. Service Hours

The services shall be provided during working hours of 8:00 a.m. to 5:00 p.m., Monday through Friday, excluding major holidays.

4. Project Representatives

The project representatives during the term of this agreement will be:

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| California Department of Health Services Contracting Officer T B A Telephone: (916) xxx-xxxx Fax: (916) xxx-xxxx | Contractor Contractor's Representative xxxx Telephone: (xxx) xxx-xxxx Fax: (xxx) xxx-xxxx |
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Exhibit A
Scope of Work

Direct all inquiries to:

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| California Department of Health Services Payment Systems Division Third Party Liability Branch Attention: T B A P.O. Box 99xxxx, MS xxxx Sacramento, CA 95xxx-xxxx Telephone: (916) xxx-xxxx Fax: (916) xxx-xxxx | Contractor xxxx Attention: xxxx xxxxxxxxxx xxxxxxx, xx xxxxx Telephone: (xxx) xxx-xxxx Fax: (xxx) xxx-xxxx |
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Either party may make changes to the information above by giving written notice to the other party. Said changes shall not require an amendment to this agreement.

5. Delegation of Authority

- A. CDHS intends to implement this contract through a single administrator, hereafter called the "Contracting Officer." The Director of CDHS (Director) shall appoint the Contracting Officer. The Contracting Officer, on behalf of the Director, shall make all determinations and take all actions as are appropriate under this contract, subject to the limitations of applicable federal and State laws and regulations. The Contracting Officer may delegate his/her authority to act as an authorized representative through prior written notice to the Contractor. The name of the Contracting Officer and/or his/her authorized representative shall be issued to the Contractor upon the CDHS' approval, prior to the effective date of the contract.
- B. The Contractor shall designate a single administrator, hereafter, called the Contractor's Representative, who shall be located in the Contractor's facility in California. The Contractor's Representative, on behalf of the Contractor, shall make all determinations and take all actions as are appropriate to implement the contract, subject to the limitations of the contract, federal and State laws and regulations. The Contractor's Representative may delegate his/her authority to act as an authorized representative through prior written notice to the Contracting Officer. The Contractor's Representative or his/her designee shall be empowered to legally bind the Contractor to all agreements reached with CDHS.
- C. The Contractor's Representative must be designated, in writing, by the Contractor prior to the effective date of the contract and approved by CDHS. Such designation shall be submitted to the Contracting Officer.

6. Services to be Performed

For the purposes of this contract and for purposes of discovery and recovery of amounts paid by the Medi-Cal program for a work-related illness or injury, the Contractor shall be responsible for the following:

- A. Identification of potential WC and WCAB cases.
- B. Development of WC and WCAB cases.
- C. Maintenance of WC and WCAB cases.

Exhibit A
Scope of Work

- D. Negotiation of WC and WCAB cases.
- E. Recovery of Medi-Cal funds from WC and WCAB cases.

7. See Exhibit A, Attachment I for a detailed description of the services to be performed.

Exhibit A, Attachment I
Work Plan

1. Overview—Tasks and Responsibilities

- A. The following Medi-Cal WCRP tasks and responsibilities are related to the identification and recovery of Medi-Cal paid services for work-related illnesses or injuries that result in WC awards, judgments and/or settlements. The scope of work resulting from this Contract shall be limited to WC recovery actions and will not include collection of health insurance, personal, auto or homeowners' liability. However, the Contractor is expected to notify CDHS if it discovers potential claims in these areas.
- B. A work-related illness or injury claim may be voluntarily compensated for by an employee's employer and/or their WC insurance carrier. If the claim is disputed or denied, an employee may file a claim with the WCAB for reconsideration. The WCAB has exclusive jurisdiction over such disputes and has the power to hold trials to decide whether the employer/insurance carrier is liable to pay benefits.
- C. For the purposes of this contract and for purposes of recovery of amounts paid by the Medi-Cal program for a work-related illness or injury, the Contractor shall be responsible for the:
 - 1) Discovery and identification of potential WC and WCAB cases;
 - 2) Development of WC and WCAB cases;
 - 3) Maintenance of WC and WCAB cases;
 - 4) Negotiation of WC and WCAB cases; and
 - 5) Recovery of Medi-Cal funds from WC and WCAB cases.

To accomplish the above the Contractor must complete the following tasks within thirty (30) days of contract execution, unless otherwise noted:

- a) Develop and maintain a case management program for data collection, case development, case maintenance, case recovery, case closure and reporting;
- b) Develop policies and procedures for the identification, development, negotiation and recovery of Medi-Cal expenditures in WCRP actions;
- c) Develop and maintain an automated accounting system that would meet the requirements as set forth in Exhibit B;
- d) Enroll in and maintain continued access to the Division of WC EDEX system; and
- e) Maintain reporting requirements as set forth in Exhibit A, Attachment I, section 13 of this Contract.

2. Take-Over and Transition

- A. The Contractor must have a plan and/or approach for coordinating the take-over of existing activities from the WCRP Contractor. The Contractor must address any foreseeable transition complications and take action to deal with or resolve transition complications to minimize the disruption of existing services. Proposers must submit a finalized take-over plan to CDHS for approval within thirty (30) days of contract execution.

Exhibit A, Attachment I
Work Plan

- B. The Contractor is required to transition operations from the current Medi-Cal WCRP Contractor. This transition from the previous Contractor to the successor Contractor is for the orderly processing of cases and workload and shall be transparent to all other entities. Before expiration of the old contract all cases where a lien or claim has not been filed must be transitioned to the new Contractor or CDHS, as appropriate.

3. Start-up Plan

- A. In order to accomplish an orderly transition, the Contractor must submit for approval a Start-Up Plan with their proposal(s) that will demonstrate readiness for the start of operations. The Contractor's Start-Up Plan shall explain how the Contractor intends to:
- 1) Appoint a Contractor's Representative prior to signing the Contract (see Exhibit A, section 4. and sections 5.B. and C.).
 - 2) Provide proof of insurance prior to signing the Contract (see Exhibit E, section 10.).
 - 3) Provide proof of bonding coverage prior to signing the Contract (see Exhibit E, section 10.).
 - 4) Provide proof of subscription and access to the EDEX system for the duration of the Contract (see Exhibit A, Attachment I, section 11.B.).
 - 5) Develop programs to support Medi-Cal WCRP case management and accounting functions (see Exhibit A, Attachment I, sections 1. and 4. and Exhibit B, section 1.
 - 6) Develop policies, procedures, manuals, invoice formats, letters and associated program-related forms for the WCRP (see Exhibits A and B).
 - 7) Throughout the contract, including any executed extensions, provide legal representation, including but not limited to Staff Attorneys, with the expertise to successfully negotiate/litigate all WCRP matters on behalf of CDHS. Attorneys must be active California State Bar members by the Contract Effective Date.
 - 8) Provide a Conflict of Interest Disclosure Statement for each employee within two weeks after the Contract effective date (see Exhibit E, section 9.).
 - 9) Provide permanent facilities for operations within the State of California for the duration of the Contract.
 - 10) Comply with turnover requirements (See Exhibit E, section 4.B.).
 - 11) Present a security plan that provides for the protection of and limits unauthorized access to confidential records, information, data and data elements (See Exhibit E, section 8).
 - 12) Provide signed oaths of confidentiality for all staff members assigned to the Scope of Work for this contract within two weeks of Contract Effective Date (See Exhibit E, section 8A.).

4. Case Management

The Contractor shall establish and maintain a case management program upon execution of the contract, which must include policies and procedures that must be approved by CDHS and available for review upon request. The case management program must assure that all Medi-Cal WCAB recovery actions, which may result in a

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settlement, judgment and/or award, are filed timely and accurately, updated periodically, negotiated and recovered upon, as prescribed by W&I Code, sections 14124.70 through 14124.88. The program shall also be capable of identifying duplicate payments between Medi-Cal, employers/insurers and/or providers and initiating recovery action.

The case management program shall be developed to provide for the following functions: data collection and analysis (identification of potential case referrals), case development, initiation of lien claims and demand notices, case maintenance, case recovery, case reporting and case closure.

The Contractor shall develop procedures and aging reports for monitoring and reporting the use of case referrals.

5. Data Collection and Analysis

The Contractor shall collect and analyze potential WCRP case referrals to ensure there is adequate information for case development.

At a minimum, the Contractor must obtain potential case referral information from a variety of sources, including, but not limited to:

- A. Electronic Data Exchange System (EDEX)
- B. Department of Industrial Relations (DIR);
- C. WCAB;
- D. Insurance companies;
- E. Managed Care Plans (MCP);
- F. Medi-Cal beneficiaries;
- G. Medical care providers;
- H. Other federal, state and county offices;
- I. State inquiry letters; and
- J. Any other sources available to or developed by the Contractor.

6. Case Development

The Contractor shall develop potential WCRP cases, as identified in Exhibit A, Attachment I, section 5., within 30 days of receipt of referral. Case development shall include:

- A. Determine whether the injured party (beneficiary) was eligible for Medi-Cal benefits on or during the period of the illness and/or injury by accessing eligibility data provided by the State. Refer to Exhibit A, Attachment I, section 11.A., for additional information.
- B. If Medi-Cal eligibility is found on or after the date of illness or injury, obtain Medi-Cal payment information on the injured party from all appropriate sources including:
 - 1) Claim Detail Reports (CDR)
 - 2) Dental Fiscal Intermediary (Delta Dental)

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Work Plan

- 3) Managed Care Plans
 - a. County Organized Health Systems (COHS)
 - b. Dental Managed Care
 - c. Geographic Managed Care (GMC)
 - d. Prepaid Health Plans (PHP)
 - e. Primary Care Case Management (PCCM)
 - f. Two-Plan Model
 - g. Other Managed Care Projects
- 4) In-Home Support Services/Personal Care Services
- 5) California Department of Developmental Services (DDS)
- 6) Mental Health Services

Refer to Exhibit A, Attachment I, section 10, Medi-Cal Payment Sources for additional information.

- C. Verify that payments made by Medi-Cal were not duplicated by the employer or WC insurer using all of the following information: provider, beneficiary, date of service, type of service and procedure code.

When a duplicate payment to a provider is identified, the Contractor shall mail a demand for payment to the provider to recover full reimbursement of any fees paid by CDHS for those services, pursuant to W&I Code section 14124.791. If payment is not received after 30 days, the Contractor shall mail a second demand for payment. After 45 days from the second demand, if the provider payment is not received, the case shall be referred to the State for involuntary collection action.

Duplicate provider payment cases referred to the State by the Contractor for involuntary recovery action will result in the Contractor's bid recovery rate being reduced by one-third. (For example: if the rate is 15 percent it will be reduced to 10 percent.)

All other cases referred to the State by the Contractor for involuntary recovery action will result in the Contractor's bid recovery rate being reduced by two-thirds. For example: if the rate is 15 percent it will be reduced to 5 percent.)

- D. Determine the services for work-related illness or injury and calculate the amount of the lien or claim in an itemized format (this is referred to as an itemization of Medi-Cal paid services).

The itemization shall include, at a minimum:

- 1) Date of service,
- 2) Description of service,
- 3) Medi-Cal payment amount,
- 4) Provider of service, and
- 5) Procedure code.

- E. File claims or liens and an itemization of Medi-Cal paid services with all appropriate employers, WC insurance carriers, attorneys, representatives and/or

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the WCAB.

- F. In managed care cases, where it appears likely there will be a recovery and where managed care services data is pending and no other services have been identified for work-related illness or injury, file a \$100 'place holder' lien or claim.
- G. Notify all involved parties including, but not limited to employees, employers, beneficiary's attorney(s) and third party insurance carriers, of CDHS' right to recover Medi-Cal paid benefits.
- H. Provide legal representation on behalf of the State at WC conferences, hearings, trials and other appearances when and where appropriate. Legal representatives must possess expertise and knowledge of the applicable Labor and W&I Codes and the WC and WCAB processes to provide expert settlement negotiations in an effort to maximize recoveries for the Medi-Cal program.
- I. Assemble case information in a neat, legible and chronological order, which must be available for audit and review upon CDHS' request. Each case shall include:
 - 1) Case referral,
 - 2) Record of eligibility verification,
 - 3) Payment source information,
 - 4) Copy of lien filed with the WC carrier or the WCAB,
 - 5) Case documentation,
 - 6) All legal documents, and
 - 7) All other documents that may be developed or utilized to process and/or litigate the case.

7. Case Maintenance

Cases developed pursuant to Exhibit A, Attachment I, section 6, shall require continued monitoring. This phase consists of the maintenance of existing cases. The Contractor shall:

- A. Review status of all open cases utilizing the case management program and the EDEX system on a quarterly basis, notate status and take appropriate action.
- B. On a quarterly basis, obtain updated Medi-Cal payment information from all sources referred to in Exhibit A, Attachment I, section 6.B. to review for additional services, previously denied claims which have been resubmitted and paid and/or duplicate provider payments. The Medi-Cal liens shall be updated as necessary for the duration of treatment of the illness and/or injury of the beneficiary for services rendered through the date of settlement. See Exhibit A, Attachment I, section 10, for additional information.
- C. Maintain detailed notes of all case actions and activities taken by the Contractor for each case. An explanation is also required when action is not taken. All case notations and documentation must be kept with the existing case.

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- D. On a quarterly basis obtain updated Medi-Cal eligibility information and take appropriate action, including requesting all Medi-Cal payment information. Notate actions in case notes.
- E. File updated claims for Medi-Cal paid services reflecting any changes to CDHS' claim with the appropriate employers, WC insurance carriers, attorneys, representatives and/or the WCAB. An updated itemization shall be included.
- F. All case documentation must be retained for six years from case closing or Contract expiration, whichever is later.

8. Case Recovery

This phase consists of the recovery of Medi-Cal expenditures when a WC claim results in a settlement, judgment and/or award. The Contractor shall:

- A. Expend its best efforts to obtain the greatest recovery possible for CDHS, up to the maximum recovery allowable under the applicable statutes, regardless of any other contractual obligations the Contractor may have to other entities.
- B. Ensure that all lien claims are accurate and reflect all itemized Medi-Cal paid services through the date of settlement, judgment or award and include any payments or reimbursements received.
- C. Ensure all recoveries negotiated by the Contractor be paid directly to the State by the liable party (payor), pursuant to W&I Code section 14124.88. The Contractor shall instruct payors to make checks payable to the "California Department of Health Services," and to send them to the following address:

California Department of Health Services
Contracting Officer/WCRP
Third Party Liability Branch, Recovery Section
P.O. Box 997421, MS 4720
Sacramento, CA 95899-7421

The Contractor shall also instruct payors to clearly identify the injured worker by including the name, social security number and/or date of birth and appropriate WC or WCAB case number on the accompanying documentation.

- D. Any payments received in error by the Contractor shall be forwarded to CDHS within five working days of receipt, to the address specified above in Exhibit A, Attachment I, section 8.C. The payment must be mailed with a letter that identifies the worker's name, social security number and/or date of birth and appropriate WC or WCAB case number. The letter must indicate whether the payment is generated under the Northern or Southern Region contract.

The Contractor shall notify payors who consistently send payments to the Contractor to send payments to CDHS at the appropriate address.

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- E. Verify payments are correct and timely in accordance with the WC settlement and/or the WCAB's orders. Take appropriate actions when payments are incorrect or untimely.
- F. Obtain advance approval from the Contracting Officer or his or her designee, to waive recovery or substantially reduce its claim from any workers' compensation settlement, judgment or award.
- G. Upon request provide CDHS with documentation explaining waivers or substantial reductions in liens or claims.
- H. Verify all refund requests from providers, employers or WC carriers, and submit documentation substantiating the overpayment to CDHS within 15 days of request.

Note: If an overpayment is not the result of CDHS error, a \$100 refund processing fee will be deducted from the amount of the overpayment.

- I. Develop a system to match Medi-Cal payments against WC insurance carrier or employer payments to identify duplicate payments and initiate the recovery of these duplicate payments.
- J. Maintain case collection histories in accordance with Exhibit E, section 16 of this Contract.

9. Case Closure

This phase consists of the closure of Medi-Cal WCRP cases. The Contractor shall:

- A. Withdraw liens filed with the WCAB upon receipt of payment of CDHS' lien and/or case closure.
- B. Provide WC insurance carriers a release of the Medi-Cal lien, if requested.
- C. Ensure closed cases are maintained in accordance with Exhibit E, section 16 this Contract.
- D. Provide CDHS with documentation explaining the reason(s) for closure of all cases not resulting in recovery (e.g., copy of the WCAB decision) when closed. Documentation for waivers or substantial reductions must include a copy of the written approval signed by the Contracting Officer.
- E. Ensure all closed cases that resulted in a settlement, judgment and/or award include all documents related to the action. A copy of the signed WC settlement agreement and/or the WCAB order and copy of the formal withdrawal of the lien filed with WCAB must be included.

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10. Medi-Cal Payment Sources

If a beneficiary had eligibility on or after the date of the work-related illness or injury, the Contractor must obtain payment information from all appropriate sources on the itemized WC lien or claim for the work-related illness or injury. Below is a list resource that may be available to obtain Medi-Cal payment information. While this list is extensive it should not be considered all inclusive.

- A. The Contractor shall obtain updated payment and eligibility information quarterly for the duration of treatment of the illness and/or injury or for services rendered up to and including the date of settlement, whichever comes first.
- B. The State is responsible for providing Medi-Cal Fee-For-Service (FFS) Claim Detail Reports. In most cases, contractors shall be authorized to obtain Managed Care Plan (MCP) data directly from the plans. Dental, In-Home Supportive Services (IHSS)/Personal Care Services (PCS), developmental services (DDS) and some MCP data will be made available to the Contractor, upon request, if and when applicable to the WCRP action or claim.

1) Claim Detail Reports (CDR)

- a. A CDR is a claim history file created for each Medi-Cal beneficiary who has received services paid under Medi-Cal's FFS system. FFS is the traditional method of paying providers after the service has been rendered. The CDRs include adjudicated (paid and denied) claims submitted by medical providers for services rendered to Medi-Cal beneficiaries. Each claim includes, but is not limited to, date of service, date of payment, medical provider name, diagnosis code, description of treatment, billed amount and the Medi-Cal payment amount. If the claim is denied, a zero amount will appear in the Medi-Cal payment field. Denied claims are subject to resubmission and may be paid at a later date.
- b. Generally, providers have one year from the date the service was rendered to submit billing to the State's Medi-Cal fiscal intermediary for processing and payment.
- c. The Contractor shall obtain CDRs on all cases at the time of case development and then quarterly obtain updated CDRs to review for additional services, resubmission of previously denied claims and/or duplicate provider payments.

2) Managed Care Plans

- a. Approximately one-half of the Medi-Cal population is covered by Medi-Cal managed care arrangements. Managed Care Plans (MCPs) contract with the State, through the Medi-Cal Managed Care Division (MMCD), to enroll Medi-Cal beneficiaries into health care plans that are designed to assure timely access to comprehensive primary care,

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preventive services and other necessary health care. The type of MCP a beneficiary may be enrolled in depends on his/her county of residence.

- b. The Contractor, on behalf of CDHS, shall recover the reasonable value of benefits provided, as defined in W&I Code section 14124.70(c). If a beneficiary had MCP eligibility on or after the date of the work-related illness or injury, the Contractor must request payment information from the appropriate source(s). When the payment information is received the 'Paid Amount' for the work-related illness or injury charges should be included. If there is no 'Paid Amount' and the services have not been denied, use the 'Billed Amount' or the amount the MCP has indicated. CDRs must also be obtained on all cases when the beneficiary is MCP eligible.
- c. At the time of this Contract, the CDHS has existing managed care arrangements or contracts with the following:
 1. County Organized Health System (COHS) – A COHS is organized and operated by the county. There are five operational COHS plans based out of nine counties. In these counties, enrollment into the COHS is mandatory for beneficiaries for all aid categories. Beneficiaries do not have the option of obtaining Medi-Cal services through the traditional fee for service (FFS) system unless authorized by the COHS. A COHS is required to provide, on a capitated at-risk basis, all basic Medi-Cal covered benefits. However, mental health services and California Children Services (CCS) are carved out of COHS benefits. Payment information may be found on CDRs or by contacting the county directly.
 2. Dental Managed Care – Dental program contractors case-manage dental care for an enrolled population of Medi-Cal recipients within geographically defined boundaries. These dental managed care plans are under contract with the State and are capitated for all dental services for the population they serve.
 3. Geographic Managed Care (GMC) – Under a GMC, Medi-Cal beneficiaries are given the option of choosing from among multiple commercial managed care plans for their health and dental care services. CDHS contracts directly with each of these plans to provide, on a capitated, at-risk basis, all Medi-Cal covered benefits, excluding such specified treatments as major organ transplants, chronic renal dialysis and long-term care. Currently, two counties operate GMC programs. Sacramento County was the first to implement the GMC program. Mandatory enrollment applies to beneficiaries in aid category groups: CalWORKs, Medically Needy with no share of cost, Medically Indigent Adult (confirmed pregnancy) and Medically Indigent children. However, voluntary enrollment is allowed for those in an SSI or foster child

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aid category or who otherwise meet certain medical exemption criteria. Beneficiaries enrolled in a commercial or Medicare HMO are not allowed to enroll in the GMC. The second GMC program, referred to as “Healthy San Diego”, was implemented in San Diego to provide inpatient and all other medical services. Dental services are carved out in the San Diego GMC program and are paid through the FFS program.

4. Prepaid Health Plans (PHP) – The PHP contracting program was established as an alternative for Medi-Cal beneficiaries to the traditional FFS program. PHPs are licensed commercial health plans. CDHS contracts with PHPs to provide, on a capitated, at-risk basis, all Medi-Cal covered benefits, excluding such specified treatments as major organ transplants, chronic renal dialysis and long-term care. As of 6/1/06, only one PHP contract is active. This contract is with Kaiser Permanente to service Marin and Sonoma counties.
 5. Primary Care Case Management (PCCM) – Under PCCM, primary care providers contract with CDHS as managed care plans to provide and assume risk for primary care and specialty physicians’ services as well as selected outpatient preventive and treatment services. PCCMs exclude inpatient services and some outpatient services from the scope of benefits provided under their capitated contracts. PCCMs are being phased out with one operational PCCM, Aids Healthcare Foundation, remaining in California.
 6. Two-Plan Model – Under this program, two HMO plans operate in each county selected to participate in this program. CDHS contracts directly with each of these plans to provide, on a capitated, at-risk basis, all Medi-Cal covered benefits, excluding such specified treatments as major organ transplants, chronic renal dialysis, long-term care, mental health services and CCS. A “two-plan model” consists of 1) a locally organized health care system (“local initiative”) and 2) a single commercial plan. The mandatory aid category groups are: CalWORKs, Medically Needy with no share of cost, Medically Indigent Adult (confirmed pregnancy) and Medically Indigent children. Additional eligibility categories may enroll on a voluntary basis. Of those counties offering MCPs, most use the “two-plan model.”
- d. Other Managed Care Projects –
1. Fee-for-Service (FFS) Managed Care – CDHS established this model to improve the coordination and continuity of care for those beneficiaries in FFS. Under this program, CDHS enrolls beneficiaries with primary care providers for medical case management, thereby improving coordination of care and lowering costs. The payment information for FFS Managed Care is

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obtained on CDRs. The two FFS contracts were terminated as of 6/30/03.

2. Programs of All Inclusive Care for the Elderly (PACE) – The PACE are managed care contracts that provide the full continuum of medical, social and long-term care services to nursing home eligible Californians age 55 and over. The primary means of delivering the full range of medical and long-term care services to enrollees is through the use of adult day health care centers.
3. Senior Care Action Network (SCAN) – The SCAN is a social health maintenance organization program designed to keep functionally impaired older people living at home as long as possible. To enroll, individuals must be 65 or over and eligible for Medicare.

C. Dental Services

- 1) CDHS contracts with a dental fiscal intermediary that is responsible for adjudication of FFS dental claims for Medi-Cal, also known as Denti-Cal and creation of dental paid claims information. The claims information is transferred to CDHS through the Department of Technology Services.
- 2) When the Contractor identifies a WCRP action and/or claim that might involve injuries requiring dental services (i.e., head or mouth injuries), the Contractor will also request dental claims information from CDHS. If the recipient is enrolled in a dental MCP, the Contractor shall obtain dental claims information directly from the MCP. The Contractor shall include 100 percent of any related dental services on the WC lien.

D. In-Home Supportive Services (IHSS)/Personal Care Services (PCS)

- 1) IHSS/PCS is in-home care provided to a beneficiary and is most prevalent in Medi-Cal aid Code series 10, 20 and 60 (See Appendix 2, Data and Information Library); or when the beneficiary is seriously injured. When appropriate, the Contractor must request IHSS/PCS payment data from the State. Upon request by the Contractor, the State will provide a printout of the IHSS/PCS payment data to the Contractor. The Contractor shall include 100 percent of any related IHSS/PCS expenses on the WC lien.
- 2) The State locates IHSS/PCS data on-line by social security number and the on-line data is updated monthly.

E. Department of Developmental Services (DDS)

DDS provides services and supports for children and adults with developmental disabilities. Services are funded by several sources, including Medi-Cal and must be included on the lien claim when appropriate. The term

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developmental disability refers to a severe and chronic disability that is attributable to a mental or physical impairment. The disability must begin before the 18th birthday, be expected to continue indefinitely and present a substantial disability. Also, the disability must be due to one of the following conditions:

- a. Mental Retardation
 - b. Cerebral Palsy
 - c. Epilepsy
 - d. Autism
 - e. A disabling condition closely related to mental retardation or requiring similar treatment.
- 2) DDS services are provided through state-operated developmental centers and contracts with nonprofit agencies called regional centers.
- 3) The Contractor shall identify possible DDS clients and request DDS services from CDHS when the beneficiary suffers from one of the above listed conditions, and:
- a. The work-related illness or injury results in brain damage and/or neurological problems.
 - b. There was pre-existing brain damage, but the work-related illness or injury caused a need for additional DDS services.
 - c. The beneficiary's address on MEDS is one of the DDS developmental centers.

The Contractor shall include 100 percent of work-related illness or injury related DDS service charges on the lien or claim.

F. Mental Health Services

When the Contractor identifies a WCRP action and/or claim that might involve injuries requiring mental health services, the Contractor will request claims information from CDHS.

11. Data Sources

- A. Medi-Cal Eligibility Data System (MEDS)/Fiscal Intermediary Access to Medi-Cal Eligibility (FAME)
- 1) MEDS is a system used to review Medi-Cal eligibility. Eligibility data for Medi-Cal beneficiaries is received from the Social Security Administration and County Welfare Departments and is maintained on a centralized database by the State. The eligibility file is updated monthly to reflect any changes or new information. FAME is a copy of the MEDS eligibility file that is updated daily for use in the claims processing system by the Fiscal

Exhibit A, Attachment I
Work Plan

Agent and provides real-time eligibility information for eligibility verification.

- 2) The Contractor will be provided access to eligibility information to determine Medi-Cal eligibility on WCRP case referrals received. Each staff member/new staff member utilizing this system will be required to sign an oath of confidentiality to receive a password. The Contractor's Representative is responsible for maintaining and updating the oaths of confidentiality (see Exhibit E, section 8.A.).

B. EDEX System

- 1) The Contractor will be required to gain and maintain access to the EDEX system operated by the California Department of Industrial Relations, Division of Workers' Compensation (DWC). Access must be acquired and operational by the contract effective date and remain in effect for the duration of the contract.
- 2) The EDEX system allows subscribers and their clients to establish electronic communication between their desktop computer and the DWC database of workers' compensation cases. Specifically, subscribers can electronically file liens (including pre-application liens), receive notification of significant events in a case and make inquiries about cases that are before the WCAB.
- 3) To access EDEX services, the Contractor must have the following:
 - a. Application' software capable of sending and receiving EDEX record formats. The Contractor may choose to develop its own customized EDEX software or use software developed by an outside vendor, service bureau or information broker.
 - b. Electronic mailbox for sending and receiving transmissions.
 - c. EDEX account number. An application must be submitted to the DWC to obtain an EDEX account number.

The Contractor shall bear all cost associated with the accessing and utilization of the EDEX system. The State will be held harmless for the failure of the DWC's EDEX to perform.

12. Miscellaneous Contractor Responsibilities

The Contractor shall provide all time, materials and services necessary to perform the required work outlined in this Contract. The following represents additional responsibilities of the Contractor:

- A. Ensure that legal representatives providing services at WC conferences, hearings, trials and other appearances deemed necessary, have access to a staff attorney(s) holding an active license with the California State Bar Association and be in good standing. Legal representatives, as defined under

Exhibit A, Attachment I
Work Plan

this contract, include attorneys hired to perform services for the Contractor and staff trained in workers' compensation matters.

- B. Develop and produce any forms and letters necessary to perform contract-related functions. All such forms and letters must be approved by CDHS prior to use.
- C. Contractors may not represent the State and competing interest simultaneously. Please refer to Exhibit E, section 9, for further information.
- D. CDHS reserves the right to determine lien priority in situations when multiple Medi-Cal WCRP cases exist for the same beneficiary (i.e., workers' compensation, personal injury, estate recovery).
- E. Provide staff resources and attorney services for prompt legal opinions on workers' compensation related matters including legislation, proposed regulations and bills. Expected response time to be given when requests for opinions are made.

13. Reports and Deliverables

As a condition of acceptance of a WCRP contract, the Contractor must maintain an accounting system that provides monthly, quarterly and fiscal year end reports. The reports shall be electronically submitted to the State according to the timeframes indicated below following the close of the report period in a format acceptable to the State. The Contractor will maintain and submit separate transaction reports for WC and WCAB cases. Exhibit A, Attachment 1, section 13.A. outlines the information that shall be included for each report type.

A. Reporting Requirements

Contractor shall furnish the following reports and/or summaries of account information to CDHS:

- 1) Monthly Open Case Report—A report of open cases shall be submitted to the CDHS within 5 days of the end of each month and shall include at a minimum the following :
 - a. Beneficiary Name
 - b. Social Security Number
 - c. Date of Lien Claim
 - d. Injury Date
 - e. Lien Claim Amount
 - f. Amount Collected
 - g. Contractor Fee Percentage
 - h. Case Status
 - i. Total Dollar Amount of Open Case Inventory
 - j. Number of Open Cases

Exhibit A, Attachment I
Work Plan

- 2) Monthly Closed Case Report—A report of closed cases shall be submitted to the CDHS within 5 days of the end of each month and shall include at a minimum the following:
 - a. Beneficiary Name
 - b. Social Security Number
 - c. Date of Lien Claim
 - d. Injury Date
 - e. Lien Claim Amount
 - f. Amount Collected
 - g. Closure Detail (e.g., Compromise and Release, Findings and Award, Dismissal)
 - h. Number of Closed Cases

- 3) Quarterly and Annually--Separate quarterly and contract fiscal year (FY) end reports for WC and WCAB cases must be submitted to CDHS within 20 days after the close of the quarter and the close of the contract FY. These reports shall summarize activities for the quarter and FY and shall include at a minimum the following information reported in monthly increments:
 - a. Total Number of Case Referrals identified by primary source, (i.e. County, CDHS, insurance carrier, WCAB, etc.)
 - b. Total Number of Case Referrals and source of referrals (identified by the Contractor)
 - c. Total Number of Cases Opened
 - d. Total Amount of Recoveries
 - e. Total Amount of Contractor's Fees
 - f. Total Number of Uncollectable Cases
 - g. Total Number of Cases Closed
 - h. Grand total of Letters a. through g. combining WC and WCAB Activities

- 4) Aging reports including open cases, statutes of limitation, last action date and next or future action to demonstrate an active pursuit of cases.

- 5) Ad Hoc reports and miscellaneous reports to the CDHS within 5 working days of CDHS' request.

- 6) Documentation on any case within 5 working days of CDHS' request.

14. State Responsibilities

In discharging its obligations under the resulting contract, the State will perform the following duties:

- A. Make appropriate payments for work performed by the Contractor as specified in the contract.

Exhibit A, Attachment I
Work Plan

- B. Designate a staff person, also referred to as the WCRP Contracting Officer, who will act as a contact within CDHS for all WCRP related matters. Notify the Contractor of any change in staff for this position.
- C. Provide necessary access and training for the State's MEDS/FAME data.
- D. Evaluate and approve or disapprove all program-related procedures and forms the Contractor proposes to use to perform the contract requirements for the Contractor's staff.
- E. Provide a list of MCPs and addresses and inform Contractor of changes with MCPs as needed.
- F. Specify content and format for reports to be prepared by the Contractor.
- G. Notify the Contractor of changes regarding WCRP content, regulations, policies, procedures and guidelines affecting performance under this contract.

Exhibit B
Budget Detail and Payment Provisions

1. Invoicing and Payment

- A. For services satisfactorily rendered, and upon receipt and approval of the Contractor's itemized invoices, the State agrees to compensate the Contractor a fixed percentage of the Medi-Cal expenditures recovered on behalf of the State.
- B. Contractor bid recovery payments will be made monthly in arrears based on itemized invoices provided that contractual responsibilities have been met. Invoices will be reconciled against CDHS' deposit listings prior to authorizing payment. Monthly invoices will be paid after approval and evaluation of the Contractor's performance. The first payment of the contract will be issued approximately 60 State workdays after receipt of an approved invoice, satisfactory implementation of contract responsibilities and only if recoveries are made by the Contractor. Thereafter, the State intends to pay invoices within 45 calendar days after receipt by CDHS.
- C. Invoices shall include the Contract Agreement Number and shall be electronically submitted not more frequently than monthly in arrears to the following electronic mail address: xxxxxxx@dhs.ca.gov. The invoice must include the following address.

xxx xxxxx, Contracting Officer
California Department of Health Services
Third Party Liability Branch, Program Analysis Unit
MS 47xx, P.O. Box 99xxxx
Sacramento, CA 95xxx-7xxx

CDHS, at its discretion, may designate an alternative invoice submission address. A change in the invoice address shall be accompanied via a written notice to the Contractor by CDHS and shall not require an amendment to this agreement.

- D. Invoices shall:
 - 1) Be electronically submitted, or as agreed upon by the Contracting Officer and Contractor.
 - 2) Be submitted by the 15th working day of the month following the month of service.
 - 3) Be submitted separately for recoveries derived from WC cases and recoveries derived from WCAB cases.
 - 4) Bear the Contractor's name as shown on the agreement.
 - 5) Include the contract agreement number.
 - 6) Identify the billing month covered by the invoice.
 - 7) Itemize the billings by Medi-Cal recipient's name and social security number. Include the date of injury, the amount of the Medi-Cal lien, the amount collected, the amount due, the cost recovery rate, the date the lien was filed and supporting documentation.
 - 8) Include the total amount due for the billing period.
 - 9) Report expenses attributed to DVBE subcontractors or DVBE suppliers at any tier (if any). This requirement only applies if the contractor identified DVBEs for participation during the selection or negotiation process.
 - 10) Certify that applicable requirements for performance have been met.
- E. Medi-Cal recovery payments received by CDHS must be invoiced within one year of receipt in order to be paid.

Exhibit B
Budget Detail and Payment Provisions

F. Rates Payable:

The Contractor will be reimbursed for services satisfactorily performed based on a fixed bid recovery rate. The rate for this Agreement is **xx** percent. This rate may be modified as listed below.

- 1) The bid recovery rate represents the fixed percentage bid by the Contractor to recover Medi-Cal expenditures involving WC and WCAB cases, on behalf of the State. The rate represents the percentage the Contractor will receive for each dollar collected for the State.
- 2) In an effort to maximize recoveries to the State, a "Shared Savings Plan (SSP)" incentive program has been formulated which provides the Contractor an opportunity to increase their bid recovery rate to a maximum of 25 percent. (W&I Code section 14124.83(b)). The SSP is based on each additional \$250,000 or portion thereof in additional recoveries received within a region within a contract year (including any extensions), above annual recoveries of \$1.5 million.
- 3) If the annual WCRP recoveries exceed \$1.5 million within a region, the State will authorize a 2.5 percent increase in the bid recovery rate for each additional dollar recovered within a contract year for that region. For each \$250,000 recovered above \$1.5 million, the bid recovery rate will increase by 2.5 percent for each additional dollar recovered thereafter.
 NOTE: maximum cost recovery rate is 25 percent.

EXAMPLE: This example is based on a bid recovery rate of 15 percent.

| WCRP Contract Recoveries | Bid Recovery Rate |
|---------------------------------|--------------------------|
| Up to \$1,500,000 | 15% |
| \$1,500,001 to \$1,750,000 | 17.5% |
| \$1,750,001 to \$2,000,000 | 20% |
| \$2,000,001 to \$2,250,000 | 22.5% |
| \$2,250,001 and up | 25% |

- 4) CDHS will not authorize payment for any item on the Contractor's monthly invoice if the payment or reimbursement is dated or received by CDHS prior to the date a lien or claim was filed by the Contractor for the WC or WCAB case. The date the lien or claim was filed shall be listed on the Contractor's open report and on the monthly invoice and documented in the case history.
- 5) If a billing appears on an invoice on a case that was set up and closed by the Contractor, and payment comes in after closure, the State may or may not authorize payment. The Contractor must submit documentation that verifies that the Contractor's lien or claim generated the payment.
- 6) Refunds for overpayment of contract fees shall be refunded to CDHS on the next monthly invoice until paid in full.
- 7) If a provider reimburses the State as a result of a duplicate payment, the State will authorize payment to the Contractor only if the provider was included on the lien or claim prior to closure.
- 8) Cases referred to the State by the Contractor for involuntary recovery action will result in the Contractor's bid recovery rate being reduced by two-thirds. For example, if the bid recovery

Exhibit B
Budget Detail and Payment Provisions

rate is 15 percent the Contractor will be paid 5 percent. If the case is for a duplicate payment made to a provider, the Contractor's bid recovery rate will be reduced by one-third. For example, if the bid recovery rate is 15 percent the Contractor will be paid 10 percent.

- 9) In any instance where payment to the Contractor is denied, the Contractor may submit documentation within 15 days of the denial substantiating that payment should be made and that the Contractor's lien or claim generated the payment.
- 10) If CDHS determines that the performance of the Contractor has not been demonstrated satisfactorily, the Contractor will be notified within 15 State workdays. The monthly invoice for that period may not be paid. Individual invoice items may be withheld until resolved. The Contractor shall submit a corrective action plan within 15 State workdays detailing specific changes being made to comply with the specifications of this contract. CDHS intends to pay any delayed monthly invoice within 45 State workdays after receipt of a corrective action plan, if performance conditions are met. CDHS reserves the right to assess a penalty of ten percent of the reimbursement requested on an unpaid monthly invoice for failure to perform the Scope of Work outlined in this Contract or the performance of the Contractor has not been demonstrated satisfactorily.
- 11) The Contractor shall reimburse CDHS for any Contractor-caused penalty assessments against the State and for any Contractor-caused interest payment assessments against the State, pursuant to W&I Code, section 14171.
- 12) Payments on Contractor's itemized invoices will be paid monthly in arrears provided that contractual responsibilities have been met. Invoices will be reconciled against CDHS' deposit listings prior to authorizing payment. Monthly invoices will be paid after approval and evaluation of the Contractor's performance. The first payment of the contract will be issued approximately 60 State workdays after receipt of an approved invoice, satisfactory implementation of contract responsibilities, and only if recoveries are made by the Contractor. Thereafter, CDHS intends to pay invoices within 45 calendar days after receipt.

2. Budget Contingency Clause

- A. It is mutually agreed that if the Budget Act of the current year and/or any subsequent years covered under this Agreement does not appropriate sufficient funds for the program, this Agreement shall be of no further force and effect. In this event, the State shall have no liability to pay any funds whatsoever to Contractor or to furnish any other considerations under this Agreement and Contractor shall not be obligated to perform any provisions of this Agreement.
- B. If funding for any fiscal year is reduced or deleted by the Budget Act for purposes of this program, the State shall have the option to either cancel this Agreement with no liability occurring to the State, or offer an agreement amendment to Contractor to reflect the reduced amount.

3. Prompt Payment Clause

Payment will be made in accordance with, and within the time specified in, Government Code Chapter 4.5, commencing with section 927.

Exhibit B
Budget Detail and Payment Provisions

Timely Submission of Final Invoice

- A. A final undisputed invoice shall be submitted for payment no more than 90 calendar days following the expiration or termination date of this agreement unless a later or alternate deadline is agreed to in writing by CDHS. Said invoice should be clearly marked "Final Invoice," thus indicating that all payment obligations of CDHS under this agreement have ceased and that no further payments are due or outstanding.
- B. CDHS may, at its discretion, choose not to honor any delinquent final invoice if the Contractor fails to obtain prior written approval from CDHS for an alternate final invoice submission deadline. Written approval shall be sought from CDHS prior to the expiration or termination date of this agreement.
- C. The Contractor is hereby advised of its obligation to submit, with the final invoice, a **"Contractor's Release (Exhibit F)"** acknowledging submission of the final invoice to CDHS and certifying the approximate percentage amount, if any, of recycled products used in performance of this agreement.

Exhibit C
General Terms and Conditions

This page is a place holder for Exhibit C.

The State's General Terms and Conditions (GTC 307) can only be viewed or downloaded from the following Internet site:

<http://www.ols.dgs.ca.gov/Standard+Language/default.htm>.

The State's General Terms and Conditions are modified from time to time by the California Department of General Services to comply with changes to federal or state law and the version that applies to the resulting agreement is determined based on the contract start date. CDHS reserves the right to place into the resulting agreement a more current GTC version, when applicable.

If a bidding firm does not have Internet access they are to contact the program identified in the bid cover letter to request a hard or paper copy of the State's General Term and Conditions.

Special Terms and Conditions

(For federally funded service contracts and grant awards)

The use of headings or titles throughout this exhibit is for convenience only and shall not be used to interpret or to govern the meaning of any specific term or condition. The terms "contract", "Contractor" and "Subcontractor" shall also mean, "grant", "Grantee" and "Subgrantee" respectively.

This exhibit contains provisions that require strict adherence to various contracting laws and policies. Some provisions herein are conditional and only apply if specified conditions exist (i.e., agreement total exceeds a certain amount, agreement is federally funded, etc.). The provisions herein apply to this agreement unless the provisions are removed by reference on the face of the agreement, the provisions are superseded by an alternate provision appearing elsewhere in the agreement, or the applicable conditions do not exist.

Index of Special Terms and Conditions

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| 16. Financial and Compliance Audit Requirements | |

1. Federal Equal Opportunity Requirements

(Applicable to all federally funded agreements entered into by the California Department of Health Services (CDHS).)

- a. The Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, national origin, physical or mental handicap, disability, age or status as a disabled veteran or veteran of the Vietnam era. The Contractor will take affirmative action to ensure that qualified applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, national origin, physical or mental handicap, disability, age or status as a disabled veteran or veteran of the Vietnam era. Such action shall include, but not be limited to the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and career development opportunities and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Federal Government or CDHS, setting forth the provisions of the Equal Opportunity clause, Section 503 of the Rehabilitation Act of 1973 and the affirmative action clause required by the Vietnam Era Veterans' Readjustment Assistance Act of 1974 (38 U.S.C. 4212). Such notices shall state the Contractor's obligation under the law to take affirmative action to employ and advance in employment qualified applicants without discrimination based on their race, color, religion, sex, national origin physical or mental handicap, disability, age or status as a disabled veteran or veteran of the Vietnam era and the rights of applicants and employees.
- b. The Contractor will, in all solicitations or advancements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, national origin physical or mental handicap, disability, age or status as a disabled veteran or veteran of the Vietnam era.
- c. The Contractor will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding a notice, to be provided by the Federal Government or the State, advising the labor union or workers' representative of the Contractor's commitments under the provisions herein and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- d. The Contractor will comply with all provisions of and furnish all information and reports required by Section 503 of the Rehabilitation Act of 1973, as amended, the Vietnam Era Veterans' Readjustment Assistance Act of 1974 (38 U.S.C. 4212) and of the Federal Executive Order No. 11246 as amended, including by Executive Order 11375, 'Amending Executive Order 11246 Relating to Equal Employment Opportunity,' and as supplemented by regulation at 41 CFR part 60, "Office of the Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," and of the rules, regulations, and relevant orders of the Secretary of Labor.
- e. The Contractor will furnish all information and reports required by Federal Executive Order No. 11246 as amended, including by Executive Order 11375, 'Amending Executive Order 11246 Relating to Equal Employment Opportunity,' and as supplemented by regulation at 41 CFR part 60, "Office of the Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," and the Rehabilitation Act of 1973, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to its books, records, and accounts by the State and its designated representatives and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
- f. In the event of the Contractor's noncompliance with the requirements of the provisions herein or with any federal rules, regulations, or orders which are referenced herein, this agreement may be cancelled, terminated, or suspended in whole or in part and the Contractor may be declared ineligible for further federal and state contracts in accordance with procedures authorized in Federal Executive Order No. 11246 as amended and such other sanctions may be imposed and remedies invoked as provided in Federal Executive Order No. 11246 as amended, including by Executive Order 11375, 'Amending Executive Order 11246 Relating to Equal Employment Opportunity,' and as supplemented by regulation at 41 CFR part 60, "Office of the Federal

Contract Compliance Programs, Equal Employment Opportunity, Department of Labor,” or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

- g. The Contractor will include the provisions of Paragraphs a through g in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to Federal Executive Order No. 11246 as amended, including by Executive Order 11375, ‘Amending Executive Order 11246 Relating to Equal Employment Opportunity,’ and as supplemented by regulation at 41 CFR part 60, “Office of the Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor,” or Section 503 of the Rehabilitation Act of 1973 or (38 U.S.C. 4212) of the Vietnam Era Veteran's Readjustment Assistance Act, so that such provisions will be binding upon each subcontractor or vendor. The Contractor will take such action with respect to any subcontract or purchase order as the Director of the Office of Federal Contract Compliance Programs or CDHS may direct as a means of enforcing such provisions including sanctions for noncompliance provided, however, that in the event the Contractor becomes involved in, or is threatened with litigation by a subcontractor or vendor as a result of such direction by CDHS, the Contractor may request in writing to CDHS, who, in turn, may request the United States to enter into such litigation to protect the interests of the State and of the United States.

2. Travel and Per Diem Reimbursement

(Applicable if travel and/or per diem expenses are reimbursed with contract funds.)

Reimbursement for travel and per diem expenses from CDHS under this agreement shall, unless otherwise specified in this agreement, be at the rates currently in effect, as established by the California Department of Personnel Administration (DPA), for nonrepresented state employees as stipulated in CDHS' Travel Reimbursement Information Exhibit. If the DPA rates change during the term of the agreement, the new rates shall apply upon their effective date and no amendment to this agreement shall be necessary. Exceptions to DPA rates may be approved by CDHS upon the submission of a statement by the Contractor indicating that such rates are not available to the Contractor. No travel outside the State of California shall be reimbursed without prior authorization from CDHS. Verbal authorization should be confirmed in writing. Written authorization may be in a form including fax or email confirmation.

3. Procurement Rules

(Applicable to all agreements in which equipment, miscellaneous property, commodities and/or supplies are furnished by CDHS or expenses for said items are reimbursed with state or federal funds.)

a. Equipment definitions

Wherever the term equipment and/or miscellaneous property is used, the following definitions shall apply:

- (1) **Major equipment:** A tangible or intangible item having a base unit cost of **\$5,000 or more** with a life expectancy of one (1) year or more and is either furnished by CDHS or the cost is reimbursed through this agreement. Software and videos are examples of intangible items that meet this definition.
- (2) **Minor equipment:** A tangible item having a base unit cost of **less than \$5,000** with a life expectancy of one (1) year or more that is listed on the CDHS Asset Management Unit's Minor Equipment List and is either furnished by CDHS or the cost is reimbursed through this agreement. Contractors may obtain a copy of the Minor Equipment List by making a request through the CDHS program contract manager.
- (3) **Miscellaneous property:** A specific tangible item with a life expectancy of one (1) year or more that is either furnished by CDHS or the cost is reimbursed through this agreement. Examples include, but are not limited to: furniture (excluding modular furniture), cabinets, typewriters, desktop calculators, portable dictators, non-digital cameras, etc.

b. **Government and public entities** (including state colleges/universities and auxiliary organizations), whether acting as a contractor and/or subcontractor, may secure all commodities, supplies, equipment and services related to such purchases that are required in performance of this agreement. Said procurements are subject to Paragraphs d through h of Provision 3. Paragraph c of Provision 3 shall also apply, if equipment purchases are delegated to subcontractors that are nonprofit organizations or commercial businesses.

c. **Nonprofit organizations and commercial businesses**, whether acting as a contractor and/or subcontractor, may secure commodities, supplies, equipment and services related to such purchases for performance under this agreement.

(1) Equipment purchases shall not exceed \$50,000 annually.

To secure equipment above the annual maximum limit of \$50,000, the Contractor shall make arrangements through the appropriate CDHS program contract manager, to have all remaining equipment purchased through CDHS' Purchasing Unit. The cost of equipment purchased by or through CDHS shall be deducted from the funds available in this agreement. Contractor shall submit to the CDHS program contract manager a list of equipment specifications for those items that the State must procure. The State may pay the vendor directly for such arranged equipment purchases and title to the equipment will remain with CDHS. The equipment will be delivered to the Contractor's address, as stated on the face of the agreement, unless the Contractor notifies the CDHS program contract manager, in writing, of an alternate delivery address.

(2) All equipment purchases are subject to Paragraphs d through h of Provision 3. Paragraph b of Provision 3 shall also apply, if equipment purchases are delegated to subcontractors that are either a government or public entity.

(3) Nonprofit organizations and commercial businesses, shall use a procurement system that meets the following standards:

(a) Maintain a code or standard of conduct that shall govern the performance of its officers, employees, or agents engaged in awarding procurement contracts. No employee, officer, or agent shall participate in the selection, award, or administration of a procurement contract in which, to his or her knowledge, he or she has a financial interest.

(b) Procurements shall be conducted in a manner that provides, to the maximum extent practical, open, and free competition.

(c) Procurements shall be conducted in a manner that provides for all of the following:

[1] Avoid purchasing unnecessary or duplicate items.

[2] Equipment solicitations shall be based upon a clear and accurate description of the technical requirements of the goods to be procured.

[3] Take positive steps to utilize small and veteran owned businesses.

d. Unless waived or otherwise stipulated in writing by CDHS, prior written authorization from the appropriate CDHS program contract manager will be required before the Contractor will be reimbursed for any purchase of \$5,000 or more for commodities, supplies, equipment, and services related to such purchases. The Contractor must provide in its request for authorization all particulars necessary, as specified by CDHS, for evaluating the necessity or desirability of incurring such costs. The term "purchase" excludes the purchase of services from a subcontractor and public utility services at rates established for uniform applicability to the general public.

e. In special circumstances, determined by CDHS (e.g., when CDHS has a need to monitor certain purchases, etc.), CDHS may require prior written authorization and/or the submission of paid vendor receipts for any purchase, regardless of dollar amount. CDHS reserves the right to either deny claims for reimbursement or to request repayment for any Contractor and/or subcontractor

purchase that CDHS determines to be unnecessary in carrying out performance under this agreement.

- f. The Contractor and/or subcontractor must maintain a copy or narrative description of the procurement system, guidelines, rules, or regulations that will be used to make purchases under this agreement. The State reserves the right to request a copy of these documents and to inspect the purchasing practices of the Contractor and/or subcontractor at any time.
- g. For all purchases, the Contractor and/or subcontractor must maintain copies of all paid vendor invoices, documents, bids and other information used in vendor selection, for inspection or audit. Justifications supporting the absence of bidding (i.e., sole source purchases) shall also be maintained on file by the Contractor and/or subcontractor for inspection or audit.
- h. CDHS may, with cause (e.g., with reasonable suspicion of unnecessary purchases or use of inappropriate purchase practices, etc.), withhold, cancel, modify, or retract the delegated purchase authority granted under Paragraphs b and/or c of Provision 3 by giving the Contractor no less than 30 calendar days written notice.

4. Equipment Ownership / Inventory / Disposition

(Applicable to agreements in which equipment and/or miscellaneous property is furnished by CDHS and/or when said items are purchased or reimbursed with state or federal funds.)

- a. Wherever the term equipment and/or miscellaneous property is used in Provision 4, the definitions in Provision 3, Paragraph a shall apply.

Unless otherwise stipulated in this agreement, all equipment and/or miscellaneous property that are purchased/reimbursed with agreement funds or furnished by CDHS under the terms of this agreement shall be considered state equipment and the property of CDHS.

- (1) CDHS requires the reporting, tagging and annual inventorying of all equipment and/or miscellaneous property that is furnished by CDHS or purchased/reimbursed with funds provided through this agreement.

Upon receipt of equipment and/or miscellaneous property, the Contractor shall report the receipt to the CDHS program contract manager. To report the receipt of said items and to receive property tags, Contractor shall use a form or format designated by CDHS' Asset Management Unit. If the appropriate form (i.e., Contractor Equipment Purchased with CDHS Funds) does not accompany this agreement, Contractor shall request a copy from the CDHS program contract manager.

- (2) If the Contractor enters into an agreement with a term of more than twelve months, the Contractor shall submit an annual inventory of state equipment and/or miscellaneous property to the CDHS program contract manager using a form or format designated by CDHS' Asset Management Unit. If an inventory report form (i.e., Inventory/Disposition of CDHS-Funded Equipment) does not accompany this agreement, Contractor shall request a copy from the CDHS program contract manager. Contractor shall:

- (a) Include in the inventory report, equipment and/or miscellaneous property in the Contractor's possession and/or in the possession of a subcontractor (including independent consultants).
- (b) Submit the inventory report to CDHS according to the instructions appearing on the inventory form or issued by the CDHS program contract manager.
- (c) Contact the CDHS program contract manager to learn how to remove, trade-in, sell, transfer or survey off, from the inventory report, expired equipment and/or miscellaneous property that is no longer wanted, usable or has passed its life expectancy. Instructions will be supplied by CDHS' Asset Management Unit.

- b. Title to state equipment and/or miscellaneous property shall not be affected by its incorporation

or attachment to any property not owned by the State.

- c. Unless otherwise stipulated, CDHS shall be under no obligation to pay the cost of restoration, or rehabilitation of the Contractor's and/or Subcontractor's facility which may be affected by the removal of any state equipment and/or miscellaneous property.
- d. The Contractor and/or Subcontractor shall maintain and administer a sound business program for ensuring the proper use, maintenance, repair, protection, insurance and preservation of state equipment and/or miscellaneous property.
 - (1) In administering this provision, CDHS may require the Contractor and/or Subcontractor to repair or replace, to CDHS' satisfaction, any damaged, lost or stolen state equipment and/or miscellaneous property. Contractor and/or Subcontractor shall immediately file a theft report with the appropriate police agency or the California Highway Patrol and Contractor shall promptly submit one copy of the theft report to the CDHS program contract manager.
- e. Unless otherwise stipulated by the program funding this agreement, equipment and/or miscellaneous property purchased/reimbursed with agreement funds or furnished by CDHS under the terms of this agreement, shall only be used for performance of this agreement or another CDHS agreement.
- f. Within sixty (60) calendar days prior to the termination or end of this agreement, the Contractor shall provide a final inventory report of equipment and/or miscellaneous property to the CDHS program contract manager and shall, at that time, query CDHS as to the requirements, including the manner and method, of returning state equipment and/or miscellaneous property to CDHS. Final disposition of equipment and/or miscellaneous property shall be at CDHS expense and according to CDHS instructions. Equipment and/or miscellaneous property disposition instructions shall be issued by CDHS immediately after receipt of the final inventory report. At the termination or conclusion of this agreement, CDHS may at its discretion, authorize the continued use of state equipment and/or miscellaneous property for performance of work under a different CDHS agreement.
- g. **Motor Vehicles**

(Applicable only if motor vehicles are purchased/reimbursed with agreement funds or furnished by CDHS under this agreement.)

- (1) If motor vehicles are purchased/reimbursed with agreement funds or furnished by CDHS under the terms of this agreement, within thirty (30) calendar days prior to the termination or end of this agreement, the Contractor and/or Subcontractor shall return such vehicles to CDHS and shall deliver all necessary documents of title or registration to enable the proper transfer of a marketable title to CDHS.
- (2) If motor vehicles are purchased/reimbursed with agreement funds or furnished by CDHS under the terms of this agreement, the State of California shall be the legal owner of said motor vehicles and the Contractor shall be the registered owner. The Contractor and/or a subcontractor may only use said vehicles for performance and under the terms of this agreement.
- (3) The Contractor and/or Subcontractor agree that all operators of motor vehicles, purchased/reimbursed with agreement funds or furnished by CDHS under the terms of this agreement, shall hold a valid State of California driver's license. In the event that ten or more passengers are to be transported in any one vehicle, the operator shall also hold a State of California Class B driver's license.
- (4) If any motor vehicle is purchased/reimbursed with agreement funds or furnished by CDHS under the terms of this agreement, the Contractor and/or Subcontractor, as applicable, shall provide, maintain, and certify that, at a minimum, the following type and amount of automobile liability insurance is in effect during the term of this agreement or any period of contract extension during which any vehicle remains in the Contractor's and/or Subcontractor's possession:

Automobile Liability Insurance

- (a) The Contractor, by signing this agreement, hereby certifies that it possesses or will obtain automobile liability insurance in the amount of \$1,000,000 per occurrence for bodily injury and property damage combined. Said insurance must be obtained and made effective upon the delivery date of any motor vehicle, purchased/reimbursed with agreement funds or furnished by CDHS under the terms of this agreement, to the Contractor and/or Subcontractor.
- (b) The Contractor and/or Subcontractor shall, as soon as practical, furnish a copy of the certificate of insurance to the CDHS program contract manager.
- (c) The Contractor and/or Subcontractor agree that bodily injury and property damage liability insurance, as required herein, shall remain in effect at all times during the term of this agreement or until such time as the motor vehicle is returned to CDHS.
- (d) The Contractor and/or Subcontractor agree to provide, at least thirty (30) days prior to the expiration date of said insurance coverage, a copy of a new certificate of insurance evidencing continued coverage, as indicated herein, for not less than the remainder of the term of this agreement, the term of any extension or continuation thereof, or for a period of not less than one (1) year.
- (e) The Contractor and/or Subcontractor, if not a self-insured government and/or public entity, must provide evidence, that any required certificates of insurance contain the following provisions:
 - [1] The insurer will not cancel the insured's coverage without giving thirty (30) calendar days prior written notice to the State (California Department of Health Services).
 - [2] The State of California, its officers, agents, employees, and servants are included as additional insureds, but only with respect to work performed for the State under this agreement and any extension or continuation of this agreement.
 - [3] The insurance carrier shall notify the California Department of Health Services (CDHS), in writing, of the Contractor's failure to pay premiums; its cancellation of such policies; or any other substantial change, including, but not limited to, the status, coverage, or scope of the required insurance. Such notices shall contain a reference to the agreement number for which the insurance was obtained.
- (f) The Contractor and/or Subcontractor is hereby advised that copies of certificates of insurance may be subject to review and approval by the Department of General Services (DGS), Office of Risk and Insurance Management. The Contractor shall be notified by CDHS, in writing, if this provision is applicable to this agreement. If DGS approval of the certificate of insurance is required, the Contractor agrees that no work or services shall be performed prior to obtaining said approval.
- (g) In the event the Contractor and/or Subcontractor fails to keep insurance coverage, as required herein, in effect at all times during vehicle possession, CDHS may, in addition to any other remedies it may have, terminate this agreement upon the occurrence of such event.

5. Subcontract Requirements

(Applicable to agreements under which services are to be performed by subcontractors including independent consultants.)

- a. Prior written authorization will be required before the Contractor enters into or is reimbursed for any subcontract for services costing \$5,000 or more. Except as indicated in Paragraph a(3) herein, when securing subcontracts for services exceeding \$5,000, the Contractor shall obtain at least three bids or justify a sole source award.

- (1) The Contractor must provide in its request for authorization, all information necessary for evaluating the necessity or desirability of incurring such cost.
- (2) The State may identify the information needed to fulfill this requirement.
- (3) Subcontracts performed by the following entities or for the service types listed below are exempt from the bidding and sole source justification requirements:
 - (a) A local governmental entity or the federal government,
 - (b) A State college or university from any State,
 - (c) A Joint Powers Authority,
 - (d) An auxiliary organization of a California State University or a California community college,
 - (e) A foundation organized to support the Board of Governors of the California Community Colleges,
 - (f) An auxiliary organization of the Student Aid Commission established under Education Code § 69522,
 - (g) Entities of any type that will provide subvention aid or direct services to the public,
 - (h) Entities and/or service types identified as exempt from advertising in State Administrative Manual Section 1233 subsection 3. View this publication at the following Internet address: <http://sam.dgs.ca.gov>.
- b. CDHS reserves the right to approve or disapprove the selection of subcontractors and with advance written notice, require the substitution of subcontractors and require the Contractor to terminate subcontracts entered into in support of this agreement.
 - (1) Upon receipt of a written notice from CDHS requiring the substitution and/or termination of a subcontract, the Contractor shall take steps to ensure the completion of any work in progress and select a replacement, if applicable, within 30 calendar days, unless a longer period is agreed to by CDHS.
- c. Actual subcontracts (i.e., written agreement between the Contractor and a subcontractor) of \$5,000 or more are subject to the prior review and written approval of CDHS. CDHS may, at its discretion, elect to waive this right. All such waivers shall be confirmed in writing by CDHS.
- d. Contractor shall maintain a copy of each subcontract entered into in support of this agreement and shall, upon request by CDHS, make copies available for approval, inspection, or audit.
- e. CDHS assumes no responsibility for the payment of subcontractors used in the performance of the agreement. Contractor accepts sole responsibility for the payment of subcontractors used in the performance of this agreement.
- f. The Contractor is responsible for all performance requirements under this agreement even though performance may be carried out through a subcontract.
- g. The Contractor shall ensure that all subcontracts for services include provision(s) requiring compliance with applicable terms and conditions specified in this agreement.
- h. The Contractor agrees to include the following clause, relevant to record retention, in all subcontracts for services:

"(Subcontractor Name) agrees to maintain and preserve, until three years after termination of (Agreement Number) and final payment from CDHS to the Contractor, to permit CDHS or any duly authorized representative, to have access to, examine or audit any pertinent books, documents, papers and records related to this subcontract and to allow interviews of any employees who might reasonably have information related to such records."
- i. Unless otherwise stipulated in writing by CDHS, the Contractor shall be the subcontractor's sole point of contact for all matters related to performance and payment under this agreement.

- j. Contractor shall, as applicable, advise all subcontractors of their obligations pursuant to the following numbered provisions of this Exhibit: 1, 2, 3, 4, 5, 6, 7, 8, 10, 11, 12, 13, 14, 17, 19, 20, 24, and 32.

6. Income Restrictions

Unless otherwise stipulated in this agreement, the Contractor agrees that any refunds, rebates, credits, or other amounts (including any interest thereon) accruing to or received by the Contractor under this agreement shall be paid by the Contractor to CDHS, to the extent that they are properly allocable to costs for which the Contractor has been reimbursed by CDHS under this agreement.

7. Audit and Record Retention

(Applicable to agreements in excess of \$10,000.)

- a. The Contractor and/or Subcontractor shall maintain books, records, documents, and other evidence, accounting procedures and practices, sufficient to properly reflect all direct and indirect costs of whatever nature claimed to have been incurred in the performance of this agreement, including any matching costs and expenses. The foregoing constitutes "records" for the purpose of this provision.
- b. The Contractor's and/or subcontractor's facility or office or such part thereof as may be engaged in the performance of this agreement and his/her records shall be subject at all reasonable times to inspection, audit, and reproduction.
- c. Contractor agrees that CDHS, the Department of General Services, the Bureau of State Audits, or their designated representatives including the Comptroller General of the United States shall have the right to review and to copy any records and supporting documentation pertaining to the performance of this agreement. Contractor agrees to allow the auditor(s) access to such records during normal business hours and to allow interviews of any employees who might reasonably have information related to such records. Further, the Contractor agrees to include a similar right of the State to audit records and interview staff in any subcontract related to performance of this agreement. (GC 8546.7, CCR Title 2, Section 1896).
- d. The Contractor and/or Subcontractor shall preserve and make available his/her records (1) for a period of three years from the date of final payment under this agreement, and (2) for such longer period, if any, as is required by applicable statute, by any other provision of this agreement, or by subparagraphs (1) or (2) below.
 - (1) If this agreement is completely or partially terminated, the records relating to the work terminated shall be preserved and made available for a period of three years from the date of any resulting final settlement.
 - (2) If any litigation, claim, negotiation, audit, or other action involving the records has been started before the expiration of the three-year period, the records shall be retained until completion of the action and resolution of all issues which arise from it, or until the end of the regular three-year period, whichever is later.
- e. The Contractor and/or Subcontractor shall comply with the above requirements and be aware of the penalties for violations of fraud and for obstruction of investigation as set forth in Public Contract Code § 10115.10, if applicable.
- f. The Contractor and/or Subcontractor may, at its discretion, following receipt of final payment under this agreement, reduce its accounts, books and records related to this agreement to microfilm, computer disk, CD ROM, or other data storage medium. Upon request by an authorized representative to inspect, audit or obtain copies of said records, the Contractor and/or Subcontractor must supply or make available applicable devices, hardware, and/or software necessary to view, copy and/or print said records. Applicable devices may include, but are not limited to, microfilm readers and microfilm printers, etc.

8. Site Inspection

The State, through any authorized representatives, has the right at all reasonable times to inspect or otherwise evaluate the work performed or being performed hereunder including subcontract supported activities and the premises in which it is being performed. If any inspection or evaluation is made of the premises of the Contractor or Subcontractor, the Contractor shall provide and shall require Subcontractors to provide all reasonable facilities and assistance for the safety and convenience of the authorized representatives in the performance of their duties. All inspections and evaluations shall be performed in such a manner as will not unduly delay the work.

9. Federal Contract Funds

(Applicable only to that portion of an agreement funded in part or whole with federal funds.)

- a. It is mutually understood between the parties that this agreement may have been written before ascertaining the availability of congressional appropriation of funds, for the mutual benefit of both parties, in order to avoid program and fiscal delays which would occur if the agreement were executed after that determination was made.
- b. This agreement is valid and enforceable only if sufficient funds are made available to the State by the United States Government for the fiscal years covered by the term of this agreement. In addition, this agreement is subject to any additional restrictions, limitations, or conditions enacted by the Congress or any statute enacted by the Congress which may affect the provisions, terms or funding of this agreement in any manner.
- c. It is mutually agreed that if the Congress does not appropriate sufficient funds for the program, this agreement shall be amended to reflect any reduction in funds.
- d. CDHS has the option to invalidate or cancel the agreement with 30-days advance written notice or to amend the agreement to reflect any reduction in funds.

10. Intellectual Property Rights

a. Ownership

- (1) Except where CDHS has agreed in a signed writing to accept a license, CDHS shall be and remain, without additional compensation, the sole owner of any and all rights, title and interest in all Intellectual Property, from the moment of creation, whether or not jointly conceived, that are made, conceived, derived from, or reduced to practice by Contractor or CDHS and which result directly or indirectly from this agreement.
- (2) For the purposes of this agreement, Intellectual Property means recognized protectable rights and interest such as: patents, (whether or not issued) copyrights, trademarks, service marks, applications for any of the foregoing, inventions, trade secrets, trade dress, logos, insignia, color combinations, slogans, moral rights, right of publicity, author's rights, contract and licensing rights, works, mask works, industrial design rights, rights of priority, know how, design flows, methodologies, devices, business processes, developments, innovations, good will and all other legal rights protecting intangible proprietary information as may exist now and/or here after come into existence, and all renewals and extensions, regardless of whether those rights arise under the laws of the United States, or any other state, country or jurisdiction.
 - (a) For the purposes of the definition of Intellectual Property, "works" means all literary works, writings and printed matter including the medium by which they are recorded or reproduced, photographs, art work, pictorial and graphic representations and works of a similar nature, film, motion pictures, digital images, animation cells, and other audiovisual works including positives and negatives thereof, sound recordings, tapes, educational materials, interactive videos and any other materials or products created, produced, conceptualized and fixed in a tangible medium of expression. It includes preliminary and final products and any materials and information developed for the purposes of producing

those final products. Works does not include articles submitted to peer review or reference journals or independent research projects.

- (3) In the performance of this agreement, Contractor will exercise and utilize certain of its Intellectual Property in existence prior to the effective date of this agreement. In addition, under this agreement, Contractor may access and utilize certain of CDHS' Intellectual Property in existence prior to the effective date of this agreement. Except as otherwise set forth herein, Contractor shall not use any of CDHS' Intellectual Property now existing or hereafter existing for any purposes without the prior written permission of CDHS. **Except as otherwise set forth herein, neither the Contractor nor CDHS shall give any ownership interest in or rights to its Intellectual Property to the other Party.** If during the term of this agreement, Contractor accesses any third-party Intellectual Property that is licensed to CDHS, Contractor agrees to abide by all license and confidentiality restrictions applicable to CDHS in the third-party's license agreement.
- (4) Contractor agrees to cooperate with CDHS in establishing or maintaining CDHS' exclusive rights in the Intellectual Property, and in assuring CDHS' sole rights against third parties with respect to the Intellectual Property. If the Contractor enters into any agreements or subcontracts with other parties in order to perform this agreement, Contractor shall require the terms of the agreement(s) to include all Intellectual Property provisions. Such terms must include, but are not limited to, the subcontractor assigning and agreeing to assign to CDHS all rights, title and interest in Intellectual Property made, conceived, derived from, or reduced to practice by the subcontractor, Contractor or CDHS and which result directly or indirectly from this agreement or any subcontract.
- (5) Contractor further agrees to assist and cooperate with CDHS in all reasonable respects, and execute all documents and, subject to reasonable availability, give testimony and take all further acts reasonably necessary to acquire, transfer, maintain, and enforce CDHS' Intellectual Property rights and interests.

b. Retained Rights / License Rights

- (1) Except for Intellectual Property made, conceived, derived from, or reduced to practice by Contractor or CDHS and which result directly or indirectly from this agreement, Contractor shall retain title to all of its Intellectual Property to the extent such Intellectual Property is in existence prior to the effective date of this agreement. Contractor hereby grants to CDHS, without additional compensation, a permanent, non-exclusive, royalty free, paid-up, worldwide, irrevocable, perpetual, non-terminable license to use, reproduce, manufacture, sell, offer to sell, import, export, modify, publicly and privately display/perform, distribute, and dispose Contractor's Intellectual Property with the right to sublicense through multiple layers, for any purpose whatsoever, to the extent it is incorporated in the Intellectual Property resulting from this agreement, unless Contractor assigns all rights, title and interest in the Intellectual Property as set forth herein.
- (2) Nothing in this provision shall restrict, limit, or otherwise prevent Contractor from using any ideas, concepts, know-how, methodology or techniques related to its performance under this agreement, provided that Contractor's use does not infringe the patent, copyright, trademark rights, license or other Intellectual Property rights of CDHS or third party, or result in a breach or default of any provisions of this Exhibit or result in a breach of any provisions of law relating to confidentiality.

c. Copyright

- (1) Contractor agrees that for purposes of copyright law, all works [as defined in Section a, subparagraph (2)(a) of this provision] of authorship made by or on behalf of Contractor in connection with Contractor's performance of this agreement shall be deemed "works made for hire". Contractor further agrees that the work of each person utilized by Contractor in connection with the performance of this agreement will be a "work made for hire," whether that person is an employee of Contractor or that person has entered into an agreement with Contractor to perform the work. Contractor shall enter into a written agreement with any such person that: (i) all work performed for Contractor shall be deemed a "work made for hire" under the Copyright Act and (ii) that person shall assign all right, title, and interest to CDHS to any work product made, conceived, derived from, or reduced to practice by Contractor or CDHS and which result directly or indirectly from this agreement.
- (2) All materials, including, but not limited to, visual works or text, reproduced or distributed pursuant to this agreement that include Intellectual Property made, conceived, derived from, or reduced to practice by Contractor or CDHS and which result directly or indirectly from this agreement, shall include CDHS' notice of copyright, which shall read in 3mm or larger typeface: "© [Enter Current Year e.g., 2006, etc.], California Department of Health Services. This material may not be reproduced or disseminated without prior written permission from the California Department of Health Services." This notice should be placed prominently on the materials and set apart from other matter on the page where it appears. Audio productions shall contain a similar audio notice of copyright.

d. Patent Rights

With respect to inventions made by Contractor in the performance of this agreement, which did not result from research and development specifically included in the agreement's scope of work, Contractor hereby grants to CDHS a license as described under Section b of this provision for devices or material incorporating, or made through the use of such inventions. If such inventions result from research and development work specifically included within the agreement's scope of work, then Contractor agrees to assign to CDHS, without additional compensation, all its right, title and interest in and to such inventions and to assist CDHS in securing United States and foreign patents with respect thereto.

e. Third-Party Intellectual Property

Except as provided herein, Contractor agrees that its performance of this agreement shall not be dependent upon or include any Intellectual Property of Contractor or third party without first: (i) obtaining CDHS' prior written approval; and (ii) granting to or obtaining for CDHS, without additional compensation, a license, as described in Section b of this provision, for any of Contractor's or third-party's Intellectual Property in existence prior to the effective date of this agreement. If such a license upon the these terms is unattainable, and CDHS determines that the Intellectual Property should be included in or is required for Contractor's performance of this agreement, Contractor shall obtain a license under terms acceptable to CDHS.

f. Warranties

- (1) Contractor represents and warrants that:
 - (a) It is free to enter into and fully perform this agreement.
 - (b) It has secured and will secure all rights and licenses necessary for its performance of this agreement.
 - (c) Neither Contractor's performance of this agreement, nor the exercise by either Party of the rights granted in this agreement, nor any use, reproduction, manufacture, sale, offer to sell, import, export, modification, public and private display/performance, distribution, and disposition of the Intellectual Property made, conceived, derived from, or reduced to practice by Contractor or CDHS and which result directly or indirectly from this agreement will infringe upon or violate any Intellectual Property right, non-disclosure

obligation, or other proprietary right or interest of any third-party or entity now existing under the laws of, or hereafter existing or issued by, any state, the United States, or any foreign country. There is currently no actual or threatened claim by any such third party based on an alleged violation of any such right by Contractor.

- (d) Neither Contractor's performance nor any part of its performance will violate the right of privacy of, or constitute a libel or slander against any person or entity.
 - (e) It has secured and will secure all rights and licenses necessary for Intellectual Property including, but not limited to, consents, waivers or releases from all authors of music or performances used, and talent (radio, television and motion picture talent), owners of any interest in and to real estate, sites, locations, property or props that may be used or shown.
 - (f) It has not granted and shall not grant to any person or entity any right that would or might derogate, encumber, or interfere with any of the rights granted to CDHS in this agreement.
 - (g) It has appropriate systems and controls in place to ensure that state funds will not be used in the performance of this agreement for the acquisition, operation or maintenance of computer software in violation of copyright laws.
 - (h) It has no knowledge of any outstanding claims, licenses or other charges, liens, or encumbrances of any kind or nature whatsoever that could affect in any way Contractor's performance of this agreement.
- (2) CDHS MAKES NO WARRANTY THAT THE INTELLECTUAL PROPERTY RESULTING FROM THIS AGREEMENT DOES NOT INFRINGE UPON ANY PATENT, TRADEMARK, COPYRIGHT OR THE LIKE, NOW EXISTING OR SUBSEQUENTLY ISSUED.

g. Intellectual Property Indemnity

- (1) Contractor shall indemnify, defend and hold harmless CDHS and its licensees and assignees, and its officers, directors, employees, agents, representatives, successors, and users of its products, ("Indemnitees") from and against all claims, actions, damages, losses, liabilities (or actions or proceedings with respect to any thereof), whether or not rightful, arising from any and all actions or claims by any third party or expenses related thereto (including, but not limited to, all legal expenses, court costs, and attorney's fees incurred in investigating, preparing, serving as a witness in, or defending against, any such claim, action, or proceeding, commenced or threatened) to which any of the Indemnitees may be subject, whether or not Contractor is a party to any pending or threatened litigation, which arise out of or are related to (i) the incorrectness or breach of any of the representations, warranties, covenants or agreements of Contractor pertaining to Intellectual Property; or (ii) any Intellectual Property infringement, or any other type of actual or alleged infringement claim, arising out of CDHS' use, reproduction, manufacture, sale, offer to sell, distribution, import, export, modification, public and private performance/display, license, and disposition of the Intellectual Property made, conceived, derived from, or reduced to practice by Contractor or CDHS and which result directly or indirectly from this agreement. This indemnity obligation shall apply irrespective of whether the infringement claim is based on a patent, trademark or copyright registration that issued after the effective date of this agreement. CDHS reserves the right to participate in and/or control, at Contractor's expense, any such infringement action brought against CDHS.
- (2) Should any Intellectual Property licensed by the Contractor to CDHS under this agreement become the subject of an Intellectual Property infringement claim, Contractor will exercise its authority reasonably and in good faith to preserve CDHS' right to use the licensed Intellectual Property in accordance with this agreement at no expense to CDHS. CDHS shall have the right to monitor and appear through its own counsel (at Contractor's expense) in any such claim or action. In the defense or settlement of the claim, Contractor may obtain the right for CDHS to continue using the licensed Intellectual Property; or, replace or modify the licensed Intellectual Property so that the replaced or modified Intellectual Property becomes non-

infringing provided that such replacement or modification is functionally equivalent to the original licensed Intellectual Property. If such remedies are not reasonably available, CDHS shall be entitled to a refund of all monies paid under this agreement, without restriction or limitation of any other rights and remedies available at law or in equity.

- (3) Contractor agrees that damages alone would be inadequate to compensate CDHS for breach of any term of this Intellectual Property Exhibit by Contractor. Contractor acknowledges CDHS would suffer irreparable harm in the event of such breach and agrees CDHS shall be entitled to obtain equitable relief, including without limitation an injunction, from a court of competent jurisdiction, without restriction or limitation of any other rights and remedies available at law or in equity.

h. Federal Funding

In any agreement funded in whole or in part by the federal government, CDHS may acquire and maintain the Intellectual Property rights, title, and ownership, which results directly or indirectly from the agreement; except as provided in 37 Code of Federal Regulations part 401.14; however, the federal government shall have a non-exclusive, nontransferable, irrevocable, paid-up license throughout the world to use, duplicate, or dispose of such Intellectual Property throughout the world in any manner for governmental purposes and to have and permit others to do so.

i. Survival

The provisions set forth herein shall survive any termination or expiration of this agreement or any project schedule.

11. Air or Water Pollution Requirements

Any federally funded agreement and/or subcontract in excess of \$100,000 must comply with the following provisions unless said agreement is exempt under 40 CFR 15.5.

- a. Government contractors agree to comply with all applicable standards, orders, or requirements issued under section 306 of the Clean Air Act [42 U.S.C. 1857(h)], section 508 of the Clean Water Act (33 U.S.C. 1368), Executive Order 11738, and Environmental Protection Agency regulations (40 CFR part 15).
- b. Institutions of higher education, hospitals, nonprofit organizations and commercial businesses agree to comply with all applicable standards, orders, or requirements issued under the Clean Air Act (42 U.S.C. 7401 et seq.), as amended, and the Federal Water Pollution Control Act (33 U.S.C. 1251 et seq.), as amended.

12. Prior Approval of Training Seminars, Workshops or Conferences

Contractor shall obtain prior CDHS approval of the location, costs, dates, agenda, instructors, instructional materials, and attendees at any reimbursable training seminar, workshop, or conference conducted pursuant to this contract and of any reimbursable publicity or educational materials to be made available for distribution. The Contractor shall acknowledge the support of the State whenever publicizing the work under this agreement in any media. This provision does not apply to necessary staff meetings or training sessions held for the staff of the Contractor or Subcontractor to conduct routine business matters.

13. Confidentiality of Information

- a. The Contractor and its employees, agents, or subcontractors shall protect from unauthorized disclosure names and other identifying information concerning persons either receiving services pursuant to this agreement or persons whose names or identifying information become available or are disclosed to the Contractor, its employees, agents, or subcontractors as a result of services performed under this agreement, except for statistical information not identifying any such person.

- b. The Contractor and its employees, agents, or subcontractors shall not use such identifying information for any purpose other than carrying out the Contractor's obligations under this agreement.
- c. The Contractor and its employees, agents, or subcontractors shall promptly transmit to the CDHS program contract manager all requests for disclosure of such identifying information not emanating from the client or person.
- d. The Contractor shall not disclose, except as otherwise specifically permitted by this agreement or authorized by the client, any such identifying information to anyone other than CDHS without prior written authorization from the CDHS program contract manager, except if disclosure is required by State or Federal law.
- e. For purposes of this provision, identity shall include, but not be limited to name, identifying number, symbol, or other identifying particular assigned to the individual, such as finger or voice print or a photograph.

14. Documents, Publications and Written Reports

(Applicable to agreements over \$5,000 under which publications, written reports and documents are developed or produced. Government Code Section 7550.)

Any document, publication or written report (excluding progress reports, financial reports and normal contract communications) prepared as a requirement of this agreement shall contain, in a separate section preceding the main body of the document, the number and dollar amounts of all contracts and subcontracts relating to the preparation of such document or report, if the total cost for work by nonemployees of the State exceeds \$5,000.

15. Dispute Resolution Process

- a. A Contractor grievance exists whenever there is a dispute arising from CDHS' action in the administration of an agreement. If there is a dispute or grievance between the Contractor and CDHS, the Contractor must seek resolution using the procedure outlined below.
 - (1) The Contractor should first informally discuss the problem with the CDHS program contract manager. If the problem cannot be resolved informally, the Contractor shall direct its grievance together with any evidence, in writing, to the program Branch Chief. The grievance shall state the issues in dispute, the legal authority or other basis for the Contractor's position and the remedy sought. The Branch Chief shall render a decision within ten (10) working days after receipt of the written grievance from the Contractor. The Branch Chief shall respond in writing to the Contractor indicating the decision and reasons therefore. If the Contractor disagrees with the Branch Chief's decision, the Contractor may appeal to the second level.
 - (2) When appealing to the second level, the Contractor must prepare an appeal indicating the reasons for disagreement with Branch Chief's decision. The Contractor shall include with the appeal a copy of the Contractor's original statement of dispute along with any supporting evidence and a copy of the Branch Chief's decision. The appeal shall be addressed to the Deputy Director of the division in which the branch is organized within ten (10) working days from receipt of the Branch Chief's decision. The Deputy Director of the division in which the branch is organized or his/her designee shall meet with the Contractor to review the issues raised. A written decision signed by the Deputy Director of the division in which the branch is organized or his/her designee shall be directed to the Contractor within twenty (20) working days of receipt of the Contractor's second level appeal.
- b. If the Contractor wishes to appeal the decision of the Deputy Director of the division in which the branch is organized or his/her designee, the Contractor shall follow the procedures set forth in Division 25.1 (commencing with Section 38050) of the Health and Safety Code and the regulations adopted thereunder. (Title 1, Subchapter 2.5, commencing with Section 251, California Code of Regulations.)

- c. Disputes arising out of an audit, examination of an agreement or other action not covered by subdivision (a) of Section 20204, of Chapter 2.1, Title 22, of the California Code of Regulations, and for which no procedures for appeal are provided in statute, regulation or the agreement, shall be handled in accordance with the procedures identified in Sections 51016 through 51047, Title 22, California Code of Regulations.
- d. Unless otherwise stipulated in writing by CDHS, all dispute, grievance and/or appeal correspondence shall be directed to the CDHS program contract manager.
- e. There are organizational differences within CDHS' funding programs and the management levels identified in this dispute resolution provision may not apply in every contractual situation. When a grievance is received and organizational differences exist, the Contractor shall be notified in writing by the CDHS program contract manager of the level, name, and/or title of the appropriate management official that is responsible for issuing a decision at a given level.

16. Financial and Compliance Audit Requirements

- a. The definitions used in this provision are contained in Section 38040 of the Health and Safety Code, which by this reference is made a part hereof.
- b. Direct service contract means a contract for services contained in local assistance or subvention programs or both (see Health and Safety [H&S] Code section 38020). Direct service contracts shall not include contracts, grants, or subventions to other governmental agencies or units of government nor contracts with regional centers or area agencies on aging (H&S Code section 38030).
- c. The Contractor, as indicated below, agrees to obtain one of the following audits:
 - (1) If the Contractor is a nonprofit organization (as defined in H&S Code section 38040) and receives \$25,000 or more from any State agency under a direct service contract; the Contractor agrees to obtain an annual single, organization wide, financial and compliance audit. Said audit shall be conducted according to Generally Accepted Auditing Standards. This audit does not fulfill the audit requirements of Paragraph c(3) below. The audit shall be completed by the 15th day of the fifth month following the end of the Contractor's fiscal year, **and/or**
 - (2) If the Contractor is a nonprofit organization (as defined in H&S Code section 38040) and receives less than \$25,000 per year from any State agency under a direct service contract, the Contractor agrees to obtain a biennial single, organization wide financial and compliance audit, unless there is evidence of fraud or other violation of state law in connection with this agreement. This audit does not fulfill the audit requirements of Paragraph c(3) below. The audit shall be completed by the 15th day of the fifth month following the end of the Contractor's fiscal year, **and/or**
 - (3) If the Contractor is a State or Local Government entity or Nonprofit organization (as defined by the Federal Office of Management and Budget [OMB] Circular A-133) and expends \$500,000 or more in Federal awards, the Contractor agrees to obtain an annual single, organization wide, financial and compliance audit according to the requirements specified in OMB Circular A-133 entitled "Audits of States, Local Governments, and Non-Profit Organizations". An audit conducted pursuant to this provision will fulfill the audit requirements outlined in Paragraphs c(1) and c(2) above. The audit shall be completed by the end of the ninth month following the end of the audit period. The requirements of this provision apply if:
 - (a) The Contractor is a recipient expending Federal awards received directly from Federal awarding agencies, or
 - (b) The Contractor is a subrecipient expending Federal awards received from a pass-through entity such as the State, County or community based organization.
 - (4) If the Contractor submits to CDHS a report of an audit other than an OMB A-133 audit, the

Contractor must also submit a certification indicating the Contractor has not expended \$500,000 or more in federal funds for the year covered by the audit report.

- d. Two copies of the audit report shall be delivered to the CDHS program funding this agreement. The audit report must identify the Contractor's legal name and the number assigned to this agreement. The audit report shall be due within 30 days after the completion of the audit. Upon receipt of said audit report, the CDHS program contract manager shall forward the audit report to CDHS' Audits and Investigations Unit if the audit report was submitted under Section 16.c(3), unless the audit report is from a City, County, or Special District within the State of California whereby the report will be retained by the funding program.
- e. The cost of the audits described herein may be included in the funding for this agreement up to the proportionate amount this agreement represents of the Contractor's total revenue. The CDHS program funding this agreement must provide advance written approval of the specific amount allowed for said audit expenses.
- f. The State or its authorized designee, including the Bureau of State Audits, is responsible for conducting agreement performance audits which are not financial and compliance audits. Performance audits are defined by Generally Accepted Government Auditing Standards.
- g. Nothing in this agreement limits the State's responsibility or authority to enforce State law or regulations, procedures, or reporting requirements arising thereto.
- h. Nothing in this provision limits the authority of the State to make audits of this agreement, provided however, that if independent audits arranged for by the Contractor meet Generally Accepted Governmental Auditing Standards, the State shall rely on those audits and any additional audit work and shall build upon the work already done.
- i. The State may, at its option, direct its own auditors to perform either of the audits described above. The Contractor will be given advance written notification, if the State chooses to exercise its option to perform said audits.
- j. The Contractor shall include a clause in any agreement the Contractor enters into with the audit firm doing the single organization wide audit to provide access by the State or Federal Government to the working papers of the independent auditor who prepares the single organization wide audit for the Contractor.
- k. Federal or state auditors shall have "expanded scope auditing" authority to conduct specific program audits during the same period in which a single organization wide audit is being performed, but the audit report has not been issued. The federal or state auditors shall review and have access to the current audit work being conducted and will not apply any testing or review procedures which have not been satisfied by previous audit work that has been completed.

The term "expanded scope auditing" is applied and defined in the U.S. General Accounting Office (GAO) issued Standards for *Audit of Government Organizations, Programs, Activities and Functions*, better known as the "yellow book".

17. Human Subjects Use Requirements

(Applicable only to federally funded agreements/grants in which performance, directly or through a subcontract/subaward, includes any tests or examination of materials derived from the human body.)

By signing this agreement, Contractor agrees that if any performance under this agreement or any subcontract or subagreement includes any tests or examination of materials derived from the human body for the purpose of providing information, diagnosis, prevention, treatment or assessment of disease, impairment, or health of a human being, all locations at which such examinations are performed shall meet the requirements of 42 U.S.C. Section 263a (CLIA) and the regulations thereunder.

18. Novation Requirements

If the Contractor proposes any novation agreement, CDHS shall act upon the proposal within 60 days after receipt of the written proposal. CDHS may review and consider the proposal, consult and negotiate with the Contractor, and accept or reject all or part of the proposal. Acceptance or rejection of the proposal may be made orally within the 60-day period and confirmed in writing within five days of said decision. Upon written acceptance of the proposal, CDHS will initiate an amendment to this agreement to formally implement the approved proposal.

19. Debarment and Suspension Certification

(Applicable to all agreements funded in part or whole with federal funds.)

- a. By signing this agreement, the Contractor/Grantee agrees to comply with applicable federal suspension and debarment regulations including, but not limited to 7 CFR Part 3017, 45 CFR 76, 40 CFR 32 or 34 CFR 85.
- b. By signing this agreement, the Contractor certifies to the best of its knowledge and belief, that it and its principals:
 - (1) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded by any federal department or agency;
 - (2) Have not within a three-year period preceding this application/proposal/agreement been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
 - (3) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in Paragraph b(2) herein; and
 - (4) Have not within a three-year period preceding this application/proposal/agreement had one or more public transactions (Federal, State or local) terminated for cause or default.
 - (5) Shall not knowingly enter into any lower tier covered transaction with a person who is proposed for debarment under federal regulations (i.e., 48 CFR part 9, subpart 9.4), debarred, suspended, declared ineligible, or voluntarily excluded from participation in such transaction, unless authorized by the State.
 - (6) Will include a clause entitled, "Debarment and Suspension Certification" that essentially sets forth the provisions herein, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.
- c. If the Contractor is unable to certify to any of the statements in this certification, the Contractor shall submit an explanation to the CDHS program funding this contract.

- d. The terms and definitions herein have the meanings set out in the Definitions and Coverage sections of the rules implementing Federal Executive Order 12549.
- e. If the Contractor knowingly violates this certification, in addition to other remedies available to the Federal Government, the CDHS may terminate this agreement for cause or default.

20. Smoke-Free Workplace Certification

(Applicable to federally funded agreements/grants and subcontracts/subawards, that provide health, day care, early childhood development services, education or library services to children under 18 directly or through local governments.)

- a. Public Law 103-227, also known as the Pro-Children Act of 1994 (Act), requires that smoking not be permitted in any portion of any indoor facility owned or leased or contracted for by an entity and used routinely or regularly for the provision of health, day care, early childhood development services, education or library services to children under the age of 18, if the services are funded by federal programs either directly or through state or local governments, by federal grant, contract, loan, or loan guarantee. The law also applies to children's services that are provided in indoor facilities that are constructed, operated, or maintained with such federal funds. The law does not apply to children's services provided in private residences; portions of facilities used for inpatient drug or alcohol treatment; service providers whose sole source of applicable federal funds is Medicare or Medicaid; or facilities where WIC coupons are redeemed.
- b. Failure to comply with the provisions of the law may result in the imposition of a civil monetary penalty of up to \$1,000 for each violation and/or the imposition of an administrative compliance order on the responsible party.
- c. By signing this agreement, Contractor or Grantee certifies that it will comply with the requirements of the Act and will not allow smoking within any portion of any indoor facility used for the provision of services for children as defined by the Act. The prohibitions herein are effective December 26, 1994.
- d. Contractor or Grantee further agrees that it will insert this certification into any subawards (subcontracts or subgrants) entered into that provide for children's services as described in the Act.

21. Covenant Against Contingent Fees

(Applicable only to federally funded agreements.)

The Contractor warrants that no person or selling agency has been employed or retained to solicit/secure this agreement upon an agreement of understanding for a commission, percentage, brokerage, or contingent fee, except *bona fide* employees or *bona fide* established commercial or selling agencies retained by the Contractor for the purpose of securing business. For breach or violation of this warranty, CDHS shall have the right to annul this agreement without liability or in its discretion to deduct from the agreement price or consideration, or otherwise recover, the full amount of such commission, percentage, and brokerage or contingent fee.

22. Payment Withholds

(Applicable only if a final report is required by this agreement. Not applicable to government entities.)

Unless waived or otherwise stipulated in this contract, CDHS may, at its discretion, withhold 10 percent (10%) of the face amount of the agreement, 50 percent (50%) of the final invoice, or \$3,000 whichever is greater, until CDHS receives a final report that meets the terms, conditions and/or scope of work requirements of this agreement.

23. Performance Evaluation

(Not applicable to grant agreements.)

CDHS may, at its discretion, evaluate the performance of the Contractor at the conclusion of this agreement. If performance is evaluated, the evaluation shall not be a public record and shall remain on file with CDHS. Negative performance evaluations may be considered by CDHS prior to making future contract awards.

24. Officials Not to Benefit

No members of or delegate of Congress or the State Legislature shall be admitted to any share or part of this agreement, or to any benefit that may arise therefrom. This provision shall not be construed to extend to this agreement if made with a corporation for its general benefits.

25. Four-Digit Date Compliance

Contractor warrants that it will provide only Four-Digit Date Compliant (as defined below) Deliverables and/or services to the State. "Four Digit Date compliant" Deliverables and services can accurately process, calculate, compare, and sequence date data, including without limitation date data arising out of or relating to leap years and changes in centuries. This warranty and representation is subject to the warranty terms and conditions of this Contract and does not limit the generality of warranty obligations set forth elsewhere herein.

26. Prohibited Use of State Funds for Software

(Applicable to agreements in which computer software is used in performance of the work.)

Contractor certifies that it has appropriate systems and controls in place to ensure that state funds will not be used in the performance of this agreement for the acquisition, operation or maintenance of computer software in violation of copyright laws.

27. Use of Small, Minority Owned and Women's Businesses

(Applicable to that portion of an agreement that is federally funded and entered into with institutions of higher education, hospitals, nonprofit organizations or commercial businesses.)

Positive efforts shall be made to use small businesses, minority-owned firms and women's business enterprises, whenever possible (i.e., procurement of goods and/or services). Contractors shall take all of the following steps to further this goal.

- (1) Ensure that small businesses, minority-owned firms, and women's business enterprises are used to the fullest extent practicable.
- (2) Make information on forthcoming purchasing and contracting opportunities available and arrange time frames for purchases and contracts to encourage and facilitate participation by small businesses, minority-owned firms, and women's business enterprises.
- (3) Consider in the contract process whether firms competing for larger contracts intend to subcontract with small businesses, minority-owned firms, and women's business enterprises.
- (4) Encourage contracting with consortiums of small businesses, minority-owned firms and women's business enterprises when a contract is too large for one of these firms to handle individually.
- (5) Use the services and assistance, as appropriate, of such organizations as the Federal Small Business Administration and the U.S. Department of Commerce's Minority Business Development Agency in the solicitation and utilization of small businesses, minority-owned firms and women's business enterprises.

28. Alien Ineligibility Certification

(Applicable to sole proprietors entering federally funded agreements.)

By signing this agreement, the Contractor certifies that he/she is not an alien that is ineligible for state and local benefits, as defined in Subtitle B of the Personal Responsibility and Work Opportunity Act. (8 U.S.C. 1601, et seq.)

29. Union Organizing

(Applicable only to grant agreements.)

Grantee, by signing this agreement, hereby acknowledges the applicability of Government Code 16645 through 16649 to this agreement. Furthermore, Grantee, by signing this agreement, hereby certifies that:

- a. No state funds disbursed by this grant will be used to assist, promote or deter union organizing.
- b. Grantee shall account for state funds disbursed for a specific expenditure by this grant, to show those funds were allocated to that expenditure.
- c. Grantee shall, where state funds are not designated as described in b herein, allocate, on a pro-rata basis, all disbursements that support the grant program.
- d. If Grantee makes expenditures to assist, promote or deter union organizing, Grantee will maintain records sufficient to show that no state funds were used for those expenditures, and that Grantee shall provide those records to the Attorney General upon request.

30. Contract Uniformity (Fringe Benefit Allowability)

(Applicable only to nonprofit organizations.)

Pursuant to the provisions of Article 7 (commencing with Section 100525) of Chapter 3 of Part 1 of Division 101 of the Health and Safety Code, CDHS sets forth the following policies, procedures, and guidelines regarding the reimbursement of fringe benefits.

- a. As used herein fringe benefits shall mean an employment benefit given by one's employer to an employee in addition to one's regular or normal wages or salary.
- b. As used herein, fringe benefits do not include:
 - (1) Compensation for personal services paid currently or accrued by the Contractor for services of employees rendered during the term of this agreement, which is identified as regular or normal salaries and wages, annual leave, vacation, sick leave, holidays, jury duty and/or military leave/training.
 - (2) Director's and executive committee member's fees.
 - (3) Incentive awards and/or bonus incentive pay.
 - (4) Allowances for off-site pay.
 - (5) Location allowances.
 - (6) Hardship pay.
 - (7) Cost-of-living differentials
- c. Specific allowable fringe benefits include:
 - (1) Fringe benefits in the form of employer contributions for the employer's portion of payroll taxes (i.e., FICA, SUI, SDI), employee health plans (i.e., health, dental and vision), unemployment insurance, worker's compensation insurance, and the employer's share of pension/retirement plans, provided they are granted in accordance with established written organization policies and meet all legal and Internal Revenue Service requirements.
- d. To be an allowable fringe benefit, the cost must meet the following criteria:
 - (1) Be necessary and reasonable for the performance of the agreement.

- (2) Be determined in accordance with generally accepted accounting principles.
 - (3) Be consistent with policies that apply uniformly to all activities of the Contractor.
- e. Contractor agrees that all fringe benefits shall be at actual cost.
- f. Earned/Accrued Compensation
- (1) Compensation for vacation, sick leave and holidays is limited to that amount earned/accrued within the agreement term. Unused vacation, sick leave and holidays earned from periods prior to the agreement term cannot be claimed as allowable costs. See Provision f (3)(a) for an example.
 - (2) For multiple year contracts, vacation and sick leave compensation, which is earned/accrued but not paid, due to employee(s) not taking time off may be carried over and claimed within the overall term of the multiple years of the agreement. Holidays cannot be carried over from one contract year to the next. See Provision f (3)(b) for an example.
 - (3) For single year agreements, vacation, sick leave and holiday compensation that is earned/accrued but not paid, due to employee(s) not taking time off within the term of the agreement, cannot be claimed as an allowable cost. See Provision f (3)(c) for an example.
- (a) **Example No. 1:**
- If an employee, John Doe, earns/accrues three weeks of vacation and twelve days of sick leave each year, then that is the maximum amount that may be claimed during a contract period of one year. If John Doe has five weeks of vacation and eighteen days of sick leave at the beginning of the agreement, the Contractor during a one-year agreement term may only claim up to three weeks of vacation and twelve days of sick leave actually used by the employee. Amounts earned/accrued in periods prior to the beginning of the agreement are not an allowable cost.
- (b) **Example No. 2:**
- If during a three-year (multiple year) agreement, John Doe does not use his three weeks of vacation in year one, or his three weeks in year two, but he does actually use nine weeks in year three; the Contractor would be allowed to claim all nine weeks paid for in year three. The total compensation over the three-year period cannot exceed 156 weeks (3 x 52 weeks).
- (c) **Example No. 3:**
- If during a single year agreement, John Doe works fifty weeks and used one week of vacation and one week of sick leave and all fifty-two weeks have been billed to CDHS, the remaining unused two weeks of vacation and seven days of sick leave may not be claimed as an allowable cost.

31. Lobbying Restrictions and Disclosure Certification

(Applicable to federally funded contracts in excess of \$100,000 per Section 1352 of the 31, U.S.C.)

a. Certification and Disclosure Requirements

- (1) Each person (or recipient) who requests or receives a contract, subcontract, grant, or subgrant, which is subject to Section 1352 of the 31, U.S.C., and which exceeds \$100,000 at any tier, shall file a certification (in the form set forth in Attachment 1, consisting of one page, entitled "Certification Regarding Lobbying") that the recipient has not made, and will not make, any payment prohibited by Paragraph b of this provision.
- (2) Each recipient shall file a disclosure (in the form set forth in Attachment 2, entitled "Standard Form-LLL 'disclosure of Lobbying Activities'") if such recipient has made or has agreed to make any payment using nonappropriated funds (to include profits from any covered federal action) in connection with a contract or grant or any extension or amendment of that contract or grant, which would be prohibited under Paragraph b of this provision if paid for with appropriated funds.
- (3) Each recipient shall file a disclosure form at the end of each calendar quarter in which there occurs any event that requires disclosure or that materially affect the accuracy of the information contained in any disclosure form previously filed by such person under Paragraph a(2) herein. An event that materially affects the accuracy of the information reported includes:
 - (a) A cumulative increase of \$25,000 or more in the amount paid or expected to be paid for influencing or attempting to influence a covered federal action;
 - (b) A change in the person(s) or individuals(s) influencing or attempting to influence a covered federal action; or
 - (c) A change in the officer(s), employee(s), or member(s) contacted for the purpose of influencing or attempting to influence a covered federal action.
- (4) Each person (or recipient) who requests or receives from a person referred to in Paragraph a(1) of this provision a contract, subcontract, grant or subgrant exceeding \$100,000 at any tier under a contract or grant shall file a certification, and a disclosure form, if required, to the next tier above.
- (5) All disclosure forms (but not certifications) shall be forwarded from tier to tier until received by the person referred to in Paragraph a(1) of this provision. That person shall forward all disclosure forms to CDHS program contract manager.

b. Prohibition

Section 1352 of Title 31, U.S.C., provides in part that no appropriated funds may be expended by the recipient of a federal contract, grant, loan, or cooperative agreement to pay any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with any of the following covered federal actions: the awarding of any federal contract, the making of any federal grant, the making of any federal loan, entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.

Attachment 1

STATE OF CALIFORNIA
DEPARTMENT OF HEALTH SERVICES

CERTIFICATION REGARDING LOBBYING

The undersigned certifies, to the best of his or her knowledge and belief, that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the making, awarding or entering into of this Federal contract, Federal grant, or cooperative agreement, and the extension, continuation, renewal, amendment, or modification of this Federal contract, grant, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency of the United States Government, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, or cooperative agreement, the undersigned shall complete and submit Standard Form LLL, "Disclosure of Lobbying Activities" in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontractors, subgrants, and contracts under grants and cooperative agreements) of \$100,000 or more, and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, U.S.C., any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

Name of Contractor

Printed Name of Person Signing for Contractor

Contract / Grant Number

Signature of Person Signing for Contractor

Date

Title

After execution by or on behalf of Contractor, please return to:

California Department of Health Services
(Name of the CDHS program providing the funds)
(Program's Street Address, Room Number, and MS Code)
P.O. Box 997413
Sacramento, CA 95899-7413

Attachment 2

CERTIFICATION REGARDING LOBBYING

Complete this form to disclose lobbying activities pursuant to 31 U.S.C. 1352
(See reverse for public burden disclosure)

Approved by OMB
0348-0046

| | | |
|--|---|---|
| 1. Type of Federal Action: a. contract b. grant c. cooperative agreement d. loan e. loan guarantee f. loan insurance | 2. Status of Federal Action: a. bid/offer/application b. initial award c. post-award | 3. Report Type: a. initial filing b. material change For Material Change Only: Year quarter date of last report |
| 4. Name and Address of Reporting Entity: Prime Subawardee Tier , if known: Congressional District, If known: | | 5. If Reporting Entity in No. 4 is Subawardee, Enter Name and Address of Prime: Congressional District, If known: |
| 6. Federal Department/Agency: _____ | | 7. Federal Program Name/Description: CDFA Number, if applicable: |
| 8. Federal Action Number, if known: | | 9. Award Amount, if known: |
| 10. a. Name and Address of Lobbying Entity (If individual, last name, first name, MI): (attach Continuation Sheet(s) SF-LLL-A, If necessary) | | b. Name and Address of Lobbying Entity (If individual, last name, first name, MI): (attach Continuation Sheet(s) SF-LLL-A, If necessary) |
| 11. Amount of Payment (check all that apply): \$ _____ actual _____ planned | 13. Type of Payment (check all that apply): a. retainer b. one-time fee c. commission d. contingent fee e. deferred f. other, specify: | |
| 12. Form of Payment (check all that apply): a. cash b. in-kind, specify: Nature _____ Value _____ | | |
| 14. Brief Description of Services Performed or to be Performed and Dates(s) of Service, including Officer(s), Employee(s), or Member(s) Contracted for Payment indicated in item 11: (Attach Continuation Sheet(s) SF-LLL-A, If necessary) | | |
| 15. Continuation Sheet(s) SF-LLL-A Attached: Yes _____ No _____ | | |
| 16. Information requested through this form is authorized by Title 31, U.S.C., Section 1352. This disclosure of lobbying activities is a material representation of fact upon which reliance was placed by the tier above when this transaction was made or entered into. This disclosure is required pursuant to Title 31, U.S.C., Section 1352. This information will be reported to the Congress semiannually and will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less than \$19,000 and not more than \$100,000 for each such failure. | | Signature: _____ |
| | | Print Name: _____ |
| | | Title: _____ |
| | | Telephone No.: _____ Date: _____ |
| Federal Use Only | | Authorized for Local Reproduction Standard Form-LLL |

INSTRUCTIONS FOR COMPLETION OF SF-LLL, DISCLOSURE OF LOBBYING ACTIVITIES

This disclosure form shall be completed by the reporting entity, whether subawardee or prime federal recipients at the initiation or receipt of a covered federal action, or a material change to a previous filing, pursuant to Title 31, U.S.C., Section 1352. The filing of a form is required for each payment or agreement to make payment to any lobbying entity for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with a covered federal action. Use the SF - LLL-A Continuation Sheet for additional information if the space on the form is inadequate. Complete all items that apply for both the initial filing and material change report. Refer to the implementing guidance published by the Office of Management and Budget for additional information.

1. Identify the type of covered federal action for which lobbying activity is and/or has been secured to influence the outcome of a covered federal action.
2. Identify the status of the covered federal action.
3. Identify the appropriate classification of this report. If this is a follow-up report caused by a material change to the information previously reported, enter the year and quarter in which the change occurred. Enter the date of the last previously submitted report by this reporting entity for this covered federal action.
4. Enter the full name, address, city, state, and ZIP code of the reporting entity. Include Congressional District, if known. Check the appropriate classification of the reporting entity that designates if it is, or expects to be, a prime or subaward recipient. Identify the tier of the subawardee, e.g., the first subawardee of the prime is the 1st tier. Subawards include but are not limited to subcontracts, subgrants, and contract awards under grants.
5. If the organization filing the report in Item 4 checks "Subawardee," then enter the full name, address, city, state, and ZIP code of the prime federal recipient. Include Congressional District, if known.
6. Enter the name of the federal agency making the award or loan commitment. Include at least one organizational level below agency name, if known. For example, Department of Transportation United States Coast Guard.
7. Enter the federal program name or description for the covered federal action (Item 1). If known, enter the full Catalog of Federal Domestic Assistance (CFDA) number for grants, cooperative agreements, loans, and loan commitments.
8. Enter the most appropriate federal identifying number available for the federal action identified in Item 1 (e.g., Request for Proposal (RFP) number; Invitation for Bid (IFB) number; grant announcement number; the contract grant, or loan award number; the application/proposal control number assigned by the federal agency). Include prefixes, e.g., "RFP-DE-90401."
9. For a covered federal action where there has been an award or loan commitment by the federal agency, enter the federal amount of the award/loan commitment for the prime entity identified in Item 4 or 5.
10. (a) Enter the full name, address, city, state, and ZIP code of the lobbying entity engaged by the reporting entity identified in Item 4 to influence the covered federal action.
10. (b) Enter the full names of the Individual(s) performing services and include full address if different from 10.(a). Enter last name, first name, and middle initial (MI).
11. Enter the amount of compensation paid or reasonably expected to be paid by the reporting entity (Item 4) to the lobbying entity (Item 10). Indicate whether the payment has been made (actual) or will be made (planned). Check all boxes that apply. If this is a material change report, enter the cumulative amount of payment made or planned to be made.
12. Check the appropriate box(es). Check all boxes that apply. If payment is made through an in-kind contribution, specify the nature and value of the in-kind payment.
13. Check the appropriate box(es). Check all boxes that apply. If other, specify nature.
14. Provide a specific and detailed description of the services that the lobbyist has performed, or will be expected to perform, and the date(s) of any services rendered. Include all preparatory and related activity, not just time spent in actual contact with federal officials, identify the federal official(s) or employee(s) contacted or the officer(s), employee(s), or Member(s) of Congress that were contacted.
15. Check whether or not a SF-LLL-A Continuation Sheet(s) is attached.
16. The certifying official shall sign and date the form, print his/her name, title, and telephone number.

Public reporting burden for this collection of information is estimated to average 30 minutes per response, including time for reviewing instruction, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to the Office of Management and Budget, Paperwork Reduction Project, (0348-0046), Washington, DC 20503.

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1. Additional Incorporated Exhibits

This provision may or may not appear in the resulting agreement depending on whether or not all attached exhibits were listed on the face of the agreement and whether or not other exhibits that will not be attached to the resulting contract must be incorporated by reference.

- A. The following additional exhibits are attached, incorporated herein and made a part hereof by this reference:

| | | |
|------------------|--------------------|---------|
| Exhibit H | Narrative Proposal | x pages |
|------------------|--------------------|---------|

2. Amendment Process

- A. Should either party, during the term of this agreement, desire a change or amendment to the terms of this Agreement, such changes or amendments shall be proposed in writing to the other party, who will respond in writing as to whether the proposed changes/amendments are accepted or rejected. If accepted and after negotiations are concluded, the agreed upon changes shall be made through the State's official agreement amendment process. No amendment will be considered binding on either party until it is formally approved by the State.
- B. The other party will acknowledge receipt of the proposal for contract amendment within ten days of receipt of the proposal. The party proposing any such change shall have the right to withdraw the proposal any time prior to acceptance or rejection by the other party. Any proposal shall set forth a detailed explanation of the reason and basis for the proposed change, a complete statement of cost and benefits of the proposed change and the text of the desired amendment to this contract that would provide for the change.
- C. If the proposal is accepted, this contract shall be amended to provide for the change mutually agreed to by the parties on the condition that the amendment is approved by CDHS, Department of Finance (DOF), Department of General Services (DGS) and the federal Department of Health and Human Services (DHHS), if necessary.

3. Cancellation/Termination

- A. This agreement may be cancelled or terminated by CDHS without cause upon 30 calendar days advance written notice to the Contractor. Notice shall state the effective date of and the reason for, the cancellation or termination.
- B. CDHS reserves the right to cancel or terminate this agreement immediately for cause. The Contractor may submit a written request to cancel or terminate this agreement only if CDHS substantially fails to perform its responsibilities as provided herein.
- C. The term "for cause" shall mean that the Contractor fails to meet the terms, conditions and/or responsibilities of this agreement.
- D. Agreement, cancellation or termination shall be effective as of the date indicated in CDHS' notification to the Contractor. The notice shall stipulate any final performance, invoicing or payment requirements.

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- E. Upon receipt of a notice of cancellation or termination, the Contractor shall take immediate steps to stop performance on all cases, including new cases pending review and existing cases with claims or liens filed.
- F. In the event of early cancellation or termination, the Contractor shall be entitled only to contracted compensation for monies recovered under this agreement up to the date of cancellation or termination.
- G. All obligations to perform services under this contract shall automatically terminate on the effective date of any cancellation or termination of this contract.

In the event of cancellation or termination pursuant to this Section, the State reserves the right to reassign all WCRP cases (including new cases pending review and existing cases with claims or liens filed), from the terminated Contractor to another Contractor. (See Exhibit E, Additional Provisions, Section 4.B. for Turnover Requirements.)

- H. Upon cancellation or termination of this contract, the State shall notify beneficiaries and/or their representative of the transfer of their cases to another State representative.
 - 1) Prior to cancellation or termination of the contract and upon request by the State, the Contractor shall assist the State in the orderly transfer of all WCRP cases pursuant to Turnover Requirements in Exhibit E, Additional Provisions, Section 4.B. In doing so, the contractor shall make available to the State copies of case files, claim detail reports and any other pertinent information, including information maintained by any subcontractors or sub-subcontractors (if applicable), necessary for efficient case management and recovery, as determined by the State. Costs of reproduction shall be borne by the State.

4. Contract Expiration

A. Contract Extension

The State shall retain the exclusive right to exercise the option to extend the term of this contract during the last twelve months of the contract, as determined by the original end date or by a new end date if an extension has been exercised. The State may invoke up to two separate extensions of one year each. The Contractor shall be given at least 90 days prior written notice should the State choose to exercise this option and extend the contract. Term extensions are subject to funding availability and acceptable Contractor performance.

B. Turnover Requirements

The objective of the Turnover period is to ensure that the orderly transfer of necessary data is made from the previous Contractor to the State and then to the successor Contractor. This orderly transfer of required data ensures the continuity of the filing of claims and liens and the recovery of Medi-Cal expenditures in WCRP actions and cases.

The Contractor shall be flexible to changing requirements. If the CDHS exercises its extension options, all Turnover activities shall be delayed a commensurate period of time.

Upon expiration of the contract, the Contractor shall:

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- 1) Transfer control of all unprocessed case referrals (unprocessed is defined as potential cases with no claims or liens filed with an employer, WC insurance carrier or WCAB) to CDHS for transfer to the successor contractor.
- 2) Physically transfer the cases in an orderly, timely and efficient manner and in full compliance with the security and confidentiality provisions of the contract. CDHS shall retain the authority to designate the manner and method by which the data, equipment and cases shall be transferred. Should CDHS determine that other data is required for Turnover, CDHS shall notify the Contractor in writing within the time constraints enumerated below. Costs of reproduction shall be borne by CDHS. Any delay in turning over to the State the data and/or equipment requested shall result in an assessment of a liquidated damage charge of \$500 per day against the Contractor beyond the 30 days in which any portion of the data and/or equipment is not received.
- 3) Discontinue all other recovery actions, with the exception of residual cases (cases filed with an employer, WC insurance carrier or WCAB prior to contract expiration date). The Contractor shall continue its recovery actions on the residual cases, under the same terms, conditions and bid recovery rates as set forth in this contract agreement and any executed extensions.
- 4) Develop a report describing, at the lowest level of detail understandable to the layperson, the data to be transferred to the State. This report shall be submitted to CDHS within five workdays from the cancellation, termination or expiration of the contract.
- 5) Accompany all data and information with a letter signed by the responsible authority, certifying to the accuracy and completeness of the materials supplied.

5. Use of Disabled Veterans Business Enterprise (DVBE)

- A. The State Legislature has declared that a fair portion of the total purchases and contracts or subcontracts for property and services for the State be placed with DVBE.
- B. All DVBE participation attachments, however labeled, completed as a condition of bidding, contracting or amending a subject agreement, are incorporated herein and made a part of this agreement by this reference.
- C. Contractor agrees to use the proposed DVBEs, as identified in previously submitted DVBE participation attachments, unless the Contractor submits a written request for substitution of a like or alternate subcontractor. All requests for substitution must be approved by CDHS, in writing, prior to using a substituted subcontractor.
- D. Requests for substitution must be approved by the program funding this agreement and must include:
 - 1) A written explanation of the reason for the substitution.
 - 2) A written description of the business enterprise that will be substituted, including its DVBE certification status.
 - 3) If applicable, the reason a non-DVBE subcontractor is proposed for use.
 - 4) A written description of the work to be performed by the substituted subcontractor and an

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identification of the percentage share/dollar amount of the overall contract that the substituted subcontractor will perform.

- E. If requested by CDHS, the Contractor agrees to provide verification, in a form agreed to by CDHS, that DVBE subcontractor participation under this agreement is in compliance with the goals specified at the time of contract award or with any subsequent amendment.

6. Dispute Resolution Process

- A. This provision replaces and supersedes provision 15 of Exhibit D(F).
- B. Disputes and appeals shall be used by the Contractor as the means of resolving contractual disputes.

Filing a dispute shall not preclude the State from recouping the amount in dispute from the Contractor or from offsetting this amount from subsequent monthly payment(s). If the amount to be recouped exceeds 25 percent of the monthly payment, an amount up to 25 percent shall be withheld from each monthly payment until the amount in dispute is fully recouped. If a recoupment or offset is later found to be inappropriate, the State shall repay the Contractor the full amount of recoupment or offset, plus interest at the Pooled Money Investment Rate pursuant to Government Code, Section 16480 et seq.

- C. The State and Contractor agree to attempt to resolve all contractual disputes through negotiation and mutual agreement at the Contracting Officer level without litigation. The parties recognize that implementation of this policy depends on open-mindedness and the need for both parties to provide adequate supporting information.

Before issuance of a Contracting Officer's decision, informal discussions with the parties by individuals who have not participated substantially in the matter in dispute shall be considered by the parties in efforts to reach a mutual agreement.

- D. The Contractor shall notify the Contracting Officer in writing within 15 days of the date the dispute concerning performance of this contract arises or otherwise becomes known to the Contractor, describing the conduct (including actions, inactions and written or oral communications) which it is disputing.

The Contractor's notification shall state, on the basis of the most accurate information then available to the Contractor, the following:

- 1) That it is a dispute pursuant to this Section.
- 2) The date, nature and circumstances of the conduct that is the subject of the dispute.
- 3) The names, phone numbers, function and activity of each Contractor, subcontractor, CDHS/State official or employee involved in or knowledgeable about said conduct.
- 4) The identification of any documents and the substance of any oral communications involved in such conduct. Copies of all identified documents shall be attached.
- 5) The reason why the Contractor is disputing the conduct.
- 6) The cost impact to the Contractor directly attributable to the alleged conduct, if any:

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- a. What contract line item(s) have been or may be affected by the alleged conduct;
- b. What labor or materials or both have been or may be added/deleted by the alleged conduct;
- c. To the extent practicable, what delay and disruption in the manner and sequence of performance and effect on continued performance have been or may be caused by the alleged conduct;
- d. What adjustments to contract price, delivery schedule and other provisions are required or have been or may be affected by the alleged conduct.
- e. If no cost impact is involved, the Contractor's desired remedy.

The required documentation, including cost impact data, shall be carefully prepared and submitted with substantiating documentation by the Contractor. This documentation shall serve as the basis for any subsequent appeal.

Following submission of the required documentation, with supporting documentation, the Contractor shall diligently continue performance of this contract, including matters identified in the Notification of Dispute, to the maximum extent possible.

- E. Any disputes concerning performance of this contract shall be decided by the Contracting Officer in a written decision stating the factual basis for this decision. The Contracting Officer shall serve a copy of the decision on the Contractor. The decision of the Contracting Officer shall be rendered within 30 days of a receipt of a Notification of Dispute or any additional substantiating documentation requested by the Contracting Officer, unless the Contracting Officer provides a written explanation to the Contractor why a longer period is necessary. The decision shall be final and conclusive unless within 30 days from the date of service of such decision the Contractor files with the Contracting Officer a written appeal addressed to the Branch Chief.

The Contracting Officer's decision will:

- 1) Find in favor of the Contractor, deny the Contractor's dispute or request additional substantiating documentation, in which case the Contracting Officer may;
 - a. Countermand the earlier conduct which caused the Contractor to file a dispute; or reaffirm the conduct and issue a Change Order in accordance with Exhibit E, section 12, or
 - b. Deny the Contractor's dispute and, where necessary, direct the manner of future performance; or
 - c. Request additional substantiating documentation in the event the information in the Contractor's notification is inadequate to permit a decision to be made under paragraphs a. or b. above and shall advise the Contractor as to what additional information is required and establish how that information shall be furnished.

The Contractor shall have 30 days to respond to the Contracting Officer's request for further information. Upon receipt of this additional requested information, the

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Contracting Officer shall have 30 days to respond with a decision. Failure to supply additional information required by the Contracting Officer within the time period specified above shall constitute waiver by the Contractor of all claims in accordance with Exhibit E, section 6.

- F. Pending final determination of any dispute hereunder, the Contractor shall proceed diligently with the performance of this contract and in accordance with the Contracting Officer's direction.
- G. In any appeal by the Contractor of a Contracting Officer's decision under Exhibit E, Section 6.E. where the amount in controversy is fifty thousand dollars (\$50,000) or less, the Contracting Officer and the Contractor may agree on the appointment of a single Dispute Examiner to consider and to decide the dispute.

The Dispute Examiner shall render a written decision on the dispute within 30 days of its submission, which period may be extended for an additional 30 days by the Dispute Examiner in extraordinary circumstances. The Dispute Examiner may decide the matter on the basis of documentary evidence alone, without a hearing and may require either party to produce additional evidence necessary to the decision.

The Dispute Examiner's decision is final and not subject to appeal to the Director by either party, except in cases of demonstrated bad faith, fraud or if unsupported by a reasonable determination of the evidence presented.

If the Contracting Officer and Contractor cannot agree on a Dispute Examiner, the matter shall be processed as an appeal under Exhibit E, section 6.H.

If no cost impact can be shown to be directly attributable to the conduct under the dispute or if there is no amount in controversy, the Contractor and the Contracting Officer shall mutually agree which type of appeal will be most appropriate to the circumstances, the appeal process described in Exhibit E, section 6.G. or the appeal process described in section 6.H. Failure to reach such an agreement shall be resolved by handling the appeal resolved by handling the appeal in the manner described in section 6.G.

- H. In connection with any appeal from a Contracting Officer's decision made pursuant to Exhibit E, section 6.E. involving more than fifty thousand dollars (\$50,000), the Contractor shall be afforded an opportunity to be heard and to offer evidence and oral argument in support of its appeal. At such a hearing, the State may also offer evidence and oral argument in support of its position.

The Director shall appoint a Hearing Examiner or Board composed of not more than three persons to take evidence, hear oral argument and make recommendations to the Director as to the proper findings and conclusions to be reached in the appeal. The Hearing Examiner or Board shall take the matter under submission at the conclusion of the hearing. A proposed decision, in a form that may be adopted as the decision of the Director, shall be submitted to the Director and shall be served by the State on each party in the case.

The Director may:

- 1) Adopt the proposed decision;
- 2) Reject the proposed decision and have a decision prepared based on the documentation

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and electronically recorded or transcribed record, without taking additional evidence. The Director shall not decide a dispute provided for in this paragraph without affording the parties the opportunity to present either oral or written arguments;

- 3) Refer the matter to the Hearing Examiner or Board to take additional evidence. If the case is so assigned, a new proposed decision shall be prepared based upon the additional evidence and the record established in the previous hearing.

In the event of 2) or 3) above, a copy of the new proposed decision shall be submitted to the Director for adoption and shall simultaneously be served on each party in the case.

The Director shall render a decision within 60 days after receipt of a proposed decision. The decision shall be final upon adoption by the Director. The right to judicial appeal commences upon adoption of the decision by the Director.

Regarding the provisions of Exhibit E, Section 6., the Director may appoint a representative to exercise his/her authority.

There shall be no *ex parte* communication with the Hearing Examiner, Board or Director concerning this appeal, prior to the Director's decision. Appeals involving challenges to either monthly payment or obligation changes, or Change Orders shall be given top priority among pending matters by the appointed Hearing Examiner or Board. The Hearing Examiner or Board shall expedite resolution of appeals involving monthly payment Change Orders insofar as possible within the appeal requirements and without impairing the parties' right to a full and fair hearing.

- I. For Contractor appeals pursuant to Exhibit E, section 6.H., discovery shall be conducted exclusively according to the procedure described in this section. Discovery procedures shall be the same as those provided for in Title 22, CCR, Sections 51032, 51033, 51034 and 51035, which are herein incorporated by reference, with the following exceptions to Section 50132: no "Statement of Disputed Issue," "Notice of Acceptance of the Statement of Disputed Issues" or "Issuance of a Report of Findings" shall apply. A party, upon written request made to another party, prior to the hearing and within 30 days after the filing of an appeal with the Director, is entitled to the provisions of Title 22, CCR, Section 51032, excluding the above-mentioned exceptions.

In the event that any provisions of these regulations shall be held invalid or unenforceable as applied to this contract, by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provisions of these regulations.

- J. Costs of conducting the dispute and appeal process, including Dispute Examiner, Hearing Examiner or Board, shall be shared 50 percent by the State and 50 percent by the Contractor. Each party shall bear its own costs of preparation and presentation of its case.
- K. If the Contractor fails to submit a Notification of Dispute, supporting and substantiating documentation or any additionally required information in the manner and within the time frames specified in section 6. Dispute Resolution Process, such failure shall constitute a waiver by the Contractor of all claims arising out of said conduct, whether direct or consequential in nature.

7. Access Requirements and State's Right to Monitor

This provision supplements provision 8 in Exhibit D(F), Special Terms and Conditions.

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- A. The State shall have the right to monitor all aspects of the Contractor's performance of the contract as well as the Contractor's compliance with applicable federal and State laws and regulations. Such monitoring activities shall include, but not be limited to, inspection and auditing of Contractor, subcontractor and facilities, management systems and procedures, and books and records as the Director deems appropriate, at any time during the Contractor's or other facility's normal business hours. These monitoring activities will be either announced or unannounced.
- B. To assure compliance with the contract, and for any other reasonable purpose, CDHS and its authorized representatives and designees shall have the right to premises access, with or without notice to the Contractor. This shall include any such place where duties under the contract are being performed.
- C. Staff designated by CDHS shall have access to all security areas and the Contractor shall provide and shall require any and all its subcontractors to provide, reasonable facilities, cooperation and assistance to CDHS representative(s) in the performance of their duties. Access shall be undertaken in such a manner as to not unduly delay the work of the Contractor and/or the subcontractor(s). The right of access herein shall include on-site visits by authorized designees of CDHS and by Potential Proposers involved in the procurement process for a successor Contractor.
- D. Any security device or system (e.g., badges, etc.) which the Contractor implements to identify and monitor persons seeking access to secured areas shall be supplied, by the Contractor, to the State and its authorized representatives and designees.

8. Confidentiality of Data

For purposes of this contract, all information, records, data and data elements collected and maintained for the operation of the contract and pertaining to beneficiaries will be protected by the Contractor from unauthorized disclosure in accordance with Title 42, CFR, section 431.300 et seq., W&I Code section 14100.2 and state regulations.

The Contractor shall perform the following duties and responsibilities with respect to confidentiality of information and data:

- A. Each staff member/new staff member assigned to the Scope of Work under the terms of this contract must sign an oath of confidentiality, before beginning work. The Contractor's Representative is responsible for maintaining and updating the oaths of confidentiality.
- B. The Contractor shall protect all identifiable information concerning a beneficiary and/or applicant from all other employees of the Contractor not assigned to the Scope of Work under the terms of this contract.
- C. Each staff member authorized direct computer access to confidential information that have a functional need for the data shall be individually assigned log-on identification codes and passwords.
- D. The Contractor shall present a security plan that provides for the protection of and limits unauthorized access to, confidential records, information, data and data elements.
- E. The Contractor shall not disclose, except as otherwise specifically permitted by the contract, any

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identifiable information concerning a beneficiary or applicant to any party other than CDHS without CDHS' prior written authorization specifying that the information is releasable under Title 42, CFR, section 431.300 et seq., W&I Code section 14100.2 and state regulations. The Contractor shall promptly transmit to CDHS all requests for disclosure of any identifiable information concerning a beneficiary or applicant.

- F. The Contractor shall not use such identifiable information for any purpose other than carrying out the express terms of this contract.
- G. The Contractor shall be responsible for storing confidential information under lock.
- H. The Contractor shall, at the expiration or termination of the contract, return all information to CDHS or maintain such identifiable information according to written procedures sent to the Contractor by the State for this purpose.
- I. The Contractor shall destroy such confidential information when it is no longer required. Destruction shall be by shredding for paper and microfilm documents and by the appropriate processes to destroy data on magnetic media.

9. Conflict of Interest, Incompatible Activity of Contractor and Employees

A. Contractor Responsibilities--General

The Contractor shall submit, for CDHS review and approval, if acceptable, a "Conflict of Interest Disclosure Statement" (Disclosure Statement) for each employee:

- 1) Two weeks after the effective date of the contract;
- 2) An update seven months after the contract effective date;
- 3) A yearly update thereafter and
- 4) Any time a change occurs which affects the previously submitted and approved statement. If such change occurs, a new statement, together with a Conflict of Interest Avoidance Plan, shall be sent to the Contracting Officer for prior review and approval within 14 days of the change.

B. Disclosure Statement

The Disclosure Statement shall fully describe any direct or indirect interest the Contractor, any parent corporation, or any subcontractor has in any provider of Medi-Cal services (as defined in Title 22, CCR, Section 51051) or in any billing agent(s) for Medi-Cal services, together with the name and position description of the Contractor, any parent, or subcontractor employee, director, consultant, or officer about whom the disclosure is being made.

At a minimum, the Contractor's Disclosure Statement shall disclose the name and address of any and all providers or billing agent(s) for Medi-Cal services in which:

- 1) The Contractor, or any parent corporation, or any subcontractor, or any of the Contractor's or any parent corporation's or any subcontractor's employees, directors, consultants, or officers had a direct or indirect interest of more than \$1000;
- 2) The Contractor, or any parent corporation, or any subcontractor, or any of the Contractor's, or any parent corporation's or any subcontractor's employees, directors, consultants or officers assigned to this contract is a director, officer, partner, trustee, employee or holder of

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a management position, or is self-employed;

- 3) The Contractor, or any parent corporation, or any subcontractor, or any of the Contractor's, or any parent corporation's, or any subcontractor's employees, directors, consultants or officer assigned to this contract, has derived more than \$250 in direct or indirect income within twelve months immediately prior to the submittal of a proposal.

The Contractor shall disclose the name of any subcontractor, consultant, CDHS officer, director or employee who was employed by the State of California in CDHS, the Governor's Office, Health and Welfare Agency, State Controller's Office, Office of the Attorney General and/or the Legislature from 1994 to the present, in accordance with W&I Code, section 14104.6.

If a real or apparent conflict exists, the Contractor shall, together with the disclosure and at the time of that document's submittal, submit a Conflict of Interest Avoidance Plan and procedures to hold separate such relationships and/or to safeguard against conflict. If the Contractor has nothing to disclose under this Contract Section, it shall so certify in the Disclosure Statement.

The Contractor's Representative, or his/her designee, shall certify under penalty of perjury that such reports and updates to such reports are accurate, complete and current to the best of that individual's knowledge and belief, unless the requirement is expressly waived in writing by the Contracting Officer.

C. Avoidance Plan

When a real or apparent conflict of interest exists, the Contractor shall submit to CDHS a Conflict of Interest Avoidance Plan, with the required Disclosure Statement, to safeguard against conflict of interests, within ten (10) business days of discovery. This plan shall include procedures to:

- 1) Guard against conflict or interest;
- 2) Hold separate any disclosed relationships or any potential conflict of interest relationships that could arise during the life of the contract, including, but not limited to, such problematic matters as financial interactions, reporting, sharing of office space, staff interactions, or Contractor fulfillment of contract responsibilities;
- 3) Ensure that the contractor shall discharge its responsibilities and duties with disinterest skill, zeal and diligence and that no Contractors, parent corporations or subcontractor's employee, officer, director or consultant will be in a position to exploit that position for private benefit or for other Contractor or parent corporation or subcontractor interests which are or may be in conflict with CDHS or State interests.

CDHS intends to avoid any real or apparent conflicts of interest on the part of the Contractor. Hence, CDHS reserves the right to, in its sole discretion, determine whether any information received from any source indicates the existence of a real or apparent conflict of interest and to require the Contractor to submit a Conflict of Interest Avoidance Plan for solving the conflict problem subject to prior CDHS review and approval. While it is desirable that the Contractor not have any contractual or financial relationships with providers, such relationships may be permissible so long as prompt, full disclosure is made and adequate protective Conflict of Interest Avoidance Plans and procedures are developed, reviewed and accepted by CDHS.

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For purposes of this contract, indirect interest and indirect income shall be defined as any interest owned or income received by the spouse, parent(s), or dependents of the persons covered by the disclosure provisions of this contract, Exhibit E, section 9.B.

10. Insurance and Bonding Requirements

This Contract section sets the requirements for insurance and fidelity bonding under the contract.

As used in this section, a third party carrier means an insurance and/or bonding company licensed to provide the required lines of insurance in the State of California and in the amounts required by this contract.

No policy of insurance or bond provided or maintained under this section shall provide for an exclusion for the acts of the Contractor's officers.

A. Insurance

- 1) Evidence of the insurance coverage required by Exhibit E, section 10.A. must be submitted to CDHS prior to the execution of the contract and signed by the Contracting Officer and the Contractor's Representative.
- 2) The Contractor agrees that the insurance required herein will remain in effect at all times during the term of the agreement. In the event said insurance coverage expires at any time or times during the term of this agreement, the Contractor agrees to provide, at least 30 calendar days before said expiration date, a new certificate of insurance evidencing insurance coverage as provided for herein for not less than the remainder of the term of the agreement or for a period of not less than one year. New certificates of insurance are subject to the approval of DGS and the Contractor agrees that no work or services shall be performed prior to such approval. CDHS may, in addition to any other remedies it may have, terminate this agreement on the occurrence of such event.
- 3) If the required insurance is not to be provided by a third party carrier, CDHS must approve, in writing, any proposed alternative coverage prior to its use under this contract. Any request to use coverage other than standard insurance from a third party carrier must be submitted to CDHS in writing within ten days after the Notice of Intent to Award the contract. The request shall clearly and fully set out the arrangement proposed and how such arrangements will fully comply with the contract requirements. If the request is denied by CDHS, required insurance from a third party carrier must be obtained and evidence of coverage submitted to CDHS as prescribed above within five days of the denial.
- 4) The Contractor shall provide and maintain and shall require its subcontractors to provide and maintain the following insurance during the performance of this contract:
 - a. WC insurance in accordance with the statutory requirements of California, where the work will be performed.
 - b. Comprehensive general and automobile liability insurance with minimum aggregate limits of \$1 million per occurrence for bodily injury and property damage. Such coverage must apply to all locations where any work pertaining to this contract is performed.
 - c. The State of California must be named as an additional party on the policy of insurance, with the exception of the WC insurance.

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- 5) CDHS will not be responsible for any premiums or assessments on the policy or policies. CDHS may, as its sole discretion, pay one or more premiums, if it decides that to do so would be in the best interest of CDHS. Should CDHS exercise this option to pay any premiums, it shall be fully reimbursed by the Contractor by an offset against future payments owed to the Contractor.
- 6) The Certificate of Insurance must include the following provisions stating that:
 - a. The insurer will not cancel the insured's coverage without 30 days prior written notice to CDHS;
 - b. The State of California, its officers, agents and employees are included as additional insureds, but only insofar as the operations under this contract are concerned;
 - c. CDHS will be notified of any failure by the Contractor to pay premiums, or any other change in the status of the scope of the required coverage within five days of such failure.

B. Bonding

- 1) The fidelity bond or other security required by Exhibit E, Section 10.B. shall be in place by the contract effective date. Evidence of the bonding coverage shall also be submitted to CDHS before the contract effective date.
- 2) If required bonding is not provided to the Contractor by a third party carrier, CDHS must approve, in writing, any other equivalent arrangements made by the Contractor prior to their use under this contract. The initial request to secure required bonding from other than an authorized third party carrier should be submitted to CDHS in writing by the contract effective date. The request shall clearly and fully set out the arrangements proposed and how such arrangements will fully comply with contract requirements. If this request is denied by CDHS, required bonding from a third party carrier shall be obtained within 15 days from the denial.
- 3) A fidelity bond or other security shall be maintained by the Contractor and subcontractors for at least an amount equal to the minimum fidelity bond required per loss covering every employee except those classifications of employees as CDHS may allow to be exempted. The fidelity bond or other security must be maintained by the Contractor and subcontractors for the life of this contract and in a form satisfactory to CDHS and must include the following conditions:
 - a. The State of California shall be named as joint obligee/beneficiary of the Contractor's bond. The Contractor's bond shall provide that the insurer or bonding company shall pay losses suffered by the CDHS directly to CDHS.
 - b. CDHS will receive 30 days prior written notice of any intent to cancel or to make any other material change in the status, coverage, or scope of the required bond or of the Contractor's failure to pay premiums.
 - c. CDHS will not be responsible for any premiums or assessments on the bond, unless, at its sole option, it decides to pay one or more premiums, should CDHS exercise this option, it shall be fully reimbursed by the Contractor by an offset against future payments

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owed to the Contractor.

Contractor's Certification

With respect to any report, invoice, record, papers, documents, books of account or other contract required data submitted to CDHS in support of an invoice or documents submitted to meet contract requirements, including, but not limited to, proofs of insurance and bonding, Lobbying Certifications and Disclosures, Conflict of Interest Disclosure Statements and/or Conflict of Interest Avoidance Plans, pursuant to the requirements of this contract, the Contractor's Representative or his/her designee shall certify that the report, invoice, record, papers, documents, books of account, or other contract required data is current, accurate, complete and in compliance with legal and contractual requirements to the best of that individual's knowledge and belief, unless the requirement for such certification is expressly waived by CDHS in writing.

11. Waivers

All conditions, covenants, duties and obligations contained in the contract can be waived only by written agreement subject to written approval by CDHS. Forbearance or indulgence in any form or manner by a party shall not be construed as a waiver, nor in any way limit the legal or equitable remedies available to that party.

12. Change Requirements

A. General Provisions

During the life of this contract, the WCRP will be a dynamic program that may require numerous changes to its operations. The development of a program that has the capability to implement such changes in an orderly and timely manner is of considerable importance.

CDHS recognizes that the scope and complexity of changes will vary widely over the life of the contract. CDHS requires adequate assurance that a given change will be correctly implemented and CDHS approval of change documents and related monitoring efforts will reflect this policy.

B. Contractor's Obligation to Implement

The Contractor shall be required to make changes mandated by CDHS. In the case of mandated changes in policy, regulations, statutes or judicial interpretation, CDHS may direct the Contractor to immediately begin implementation of any change by issuing a Change Order. If CDHS issues a Change Order, the Contractor shall be obligated to implement the required changes while discussions relevant to any Cost Proposal adjustment, if applicable, are taking place.

CDHS may, at any time, within the general scope of the contract, by written notice make changes to the WCRP requirements. CDHS will utilize a formal process to notify the Contractor, in an ongoing and timely manner, of changes to be made to the WCRP.

C. Change in Counties

CDHS shall have the option of deleting counties that have been previously included in one Contractor's Region or transferring counties from one contract to another. These events will be implemented via a Change Order and may result either in a no-cost impact on a Contractor's

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rates or in the need for re-negotiation of those rates.

13. Governing Authorities

This contract shall be governed and construed in accordance with:

- A. Welfare and Institutions Code, section 14304(a), sections 14124.70 through 14124.88;
- B. Title 22, Division 3, California Code of Regulations [CCR];
- C. California Labor Code, section 3700;
- D. All other applicable laws and regulations.

Any provision of this contract that is in conflict with the above laws, regulations and federal Medicaid statutes is hereby amended to conform to the provisions of those laws and regulations. Amendments to the contract shall be effective on the effective date of the statutes or regulations, and shall be binding on the parties even though such amendments may not have been reduced to writing and formally agreed upon and executed by the parties.

14. Fulfillment of Obligations

No covenant, condition, duty, obligation or undertaking continued or made a part of this contract shall be waived except by written agreement of the parties hereto and forbearance or indulgence in any other form or manner by either party in any regard whatsoever shall not constitute a waiver of the covenant, condition, duty, obligation or undertaking to be kept, performed or discharged by the party to which the same may apply and, until performance or satisfaction of all covenants, conditions, duties, obligations and undertakings is complete, the other party shall have the right to invoke any remedy available under this Contract or under law, notwithstanding such forbearance or indulgence.

15. Damages

A. General Damages

It is agreed by the State and the Contractor that:

- 1) If the Contractor does not provide or perform the requirements referred to or listed in this provision, damage to the State will result;
- 2) Proving such damages will be costly, difficult and time-consuming;
- 3) Should the State choose to impose liquidated damages, the Contractor will pay the State those damages for not providing or performing the specified requirements;
- 4) Additional damages may occur in specified areas by prolonged periods in which Contractor does not provide or perform requirements;
- 5) The damage figures listed below represent a good faith effort to quantify the range of harm that could reasonably be anticipated at the time of the making of the contract;
- 6) The State and the Contractor recognize that it is the policy of the California Legislature to encourage the use of liquidated damages provision in State contracts, as shown by

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Civil Code section 1671(b), Public Contract Code section 10226 and 13 California Law Revision Commission Reports 1740 and 1741;

- 7) The State may, at its discretion, offset liquidated damages from payments owed the Contractor;
- 8) The maximum amount of liquidated damages payable by the Contractor over any twelve month period is five hundred thousand dollars (\$500,000);
- 9) In the event the Contractor's failures result from a single failure, which is subject to liquidated damages, CDHS will be entitled to assess the highest single liquidated damage penalty only. There will be no concurrent assessments of liquidated damages for cascading failures that result from a single failure.

B. Liquidated Damages

- 1) Except as provided in Exhibit E, section 15.A., for each and every Contractor requirement not provided or performed as scheduled, or if a requirement is provided or performed inaccurately or incompletely, CDHS, if it intends to impose liquidated damages, shall notify the Contractor in writing that the requirement was not provided or performed as specified and that liquidated damages will be assessed accordingly. The Contractor shall have 15 days from the date of such written notice from CDHS, or longer if CDHS allows upon written request, to provide or perform the requirement as specified.
- 2) If the Contractor does not provide or perform the requirement within 15 days of the written notice, or longer if allowed by CDHS, CDHS may impose liquidated damages of \$500 per requirement per day for each day the requirement continues not to be provided or performed. If after 15 additional days from the date of CDHS imposed liquidated damages, the requirements still have not been provided or performed, CDHS, after written notice to the Contractor, may increase the liquidated damages assessment to \$1,000 per State work day per requirement until the requirement is provided or performed.

Nothing in this provision shall be construed as relieving the Contractor from performing any other contract duty not listed herein, nor is CDHS' right to enforce or to seek other remedies for failure to perform any other contract duty hereby diminished.

16. Record Keeping/Retention

This provision supplements provision 7 of Exhibit D(F), Special Terms and Conditions.

- A. The Contractor shall maintain such books and records as are necessary to disclose how the Contractor discharged its obligations under this contract. These books and records shall disclose the quantity of cases established and recovered upon, the quality of those services provided to effect recovery (i.e., number of cases negotiated, litigated), the manner and amount of payment made for those recoveries, a listing of Medi-Cal beneficiaries receiving settlements and the manner in which the Contractor administered its daily business and the cost thereof.
- B. Such books and records shall include, but are not limited to, all physical records originated or prepared pursuant to the performance under this contract including working papers; reports submitted to CDHS; financial records; all claim detail and managed care reports and other

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documentation pertaining to the medical and non-medical services rendered to Medi-Cal beneficiaries.

- C. These books and records shall be maintained by the Contractor for six years from the termination or expiration date of this contract or six years from the date of closure as required under Exhibit D(F), whichever is later. In the event the Contractor has been duly notified that CDHS, DHHS or the Controller General of the United States, the State Auditor, or their duly authorized representatives, have commenced an audit or investigation of the contract, the books and records shall be maintained six years or until such time as the matter under audit or investigation has been resolved, whichever is later.

17. Confidentiality of Data

For purposes of this contract, all information, records, data and data elements collected and maintained for the operation of the contract and pertaining to beneficiaries will be protected by the Contractor from unauthorized disclosure in accordance with Title 42, CFR, section 431.300 et seq., W&I Code section 14100.2 and state regulations.

The Contractor shall perform the following duties and responsibilities with respect to confidentiality of information and data:

- A. Each staff member/new staff member assigned to the Scope of Work under the terms of this contract must sign an oath of confidentiality. The Contractor's Representative is responsible for maintaining and updating the oaths of confidentiality.
- B. The Contractor shall protect all identifiable information concerning a beneficiary and/or applicant from all other employees of the Contractor not assigned to the Scope of Work under the terms of this contract.
- C. Each staff member authorized direct computer access to confidential information that have a functional need for the data shall be individually assigned log-on identification codes and passwords.
- D. The Contractor shall present a security plan that provides for the protection of and limits unauthorized access to, confidential records, information, data and data elements.
- E. The Contractor shall not disclose, except as otherwise specifically permitted by the contract, any identifiable information concerning a beneficiary or applicant to any party other than CDHS without CDHS' prior written authorization specifying that the information is releasable under Title 42, CFR, section 431.300 et seq., W&I Code section 14100.2 and state regulations. The Contractor shall promptly transmit to CDHS all requests for disclosure of any identifiable information concerning a beneficiary or applicant.
- F. The Contractor shall not use such identifiable information for any purpose other than carrying out the express terms of this contract.
- G. The Contractor shall be responsible for storing confidential information under lock.
- H. The Contractor shall, at the expiration or termination of the contract, return all information to the State or maintain such identifiable information according to written procedures sent to the Contractor by the State for this purpose.

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- I. The Contractor shall destroy such confidential information when it is no longer required. Destruction shall be by shredding for paper and microfilm documents and by the appropriate processes to destroy data on magnetic media.

18. Subcontract Requirements

(Applicable to agreements under which services are to be performed by subcontractors including independent consultants.)

- A. This provision replaces and supersedes provision 5 of Exhibit D(F).
- B. Contractor shall maintain a copy of each subcontract entered into in support of this agreement and shall, upon request by CDHS, make said copies available for approval, inspection or audit.
- C. Sole responsibility rests with the Contractor to ensure that subcontractors, used in performance of this agreement, are paid in a timely manner. The timeliness of said payments may be affected by the timeliness of payments issued by CDHS to the Contractor.
- D. The Contractor is responsible for all performance requirements under this agreement even though performance may be carried out through a subcontract.
- E. The Contractor shall ensure that all subcontracts for services include provision(s) requiring compliance with applicable terms and conditions specified in this agreement.
- F. The Contractor agrees to include the following clause, relevant to record retention, in all subcontracts for services:

"(Subcontractor Name) agrees to maintain and preserve, until three years after termination of (Agreement Number) and final payment from CDHS, to permit CDHS or any duly authorized representative, to have access to, examine or audit any pertinent books, documents, papers and records related to this subcontract and to allow interviews of any employees who might reasonably have information related to such records."
- G. Unless otherwise stipulated in writing by CDHS, the Contractor shall be the subcontractor's sole point of contact for all matters related to performance and payment under this agreement.
- H. Contractor shall, as applicable, advise all subcontractors of their obligations pursuant to the applicable numbered provisions of this agreement.

19. Authority of the State

Sole authority to establish or interpret policy and its applications to the above areas resides with CDHS.

The Contractor may not make any limitations, exclusions, or changes in the Scope of Work, any changes in definition or interpretation of terms; or any changes in the administration of the contract related to the Scope of Work, without the express, prior written direction or approval of the Contracting Officer.

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20. Departmental Reorganization

- A. The parties to this agreement acknowledge that the California Public Health Act of 2006 (Act; Senate Bill 162, Chapter 241, Statutes 2006), effective July 1, 2007, establishes the California Department of Public Health (CDPH) and renames the California Department of Health Services (CDHS) as the California Department of Health Care Services (DHCS).
- B. Agreements approved before July 1, 2007 shall continue in full force and effect, with the renamed DHCS and the newly formed CDPH assuming all of the rights, obligations, liabilities, and duties of the former CDHS and any of its predecessors as relates to the duties, powers, purposes, responsibilities, and jurisdiction vested by the Act in each of the resulting departments.
- C. Agreements approved on or after July 1, 2007 that refer to CDHS shall be interpreted to refer to the renamed DHCS or the newly formed CDPH, as appropriate under the terms of the agreement. DHCS or CDPH, as appropriate under the terms of the agreement, shall assume all of the rights, obligations, liabilities, and duties of the former CDHS and any of its predecessors as relates to the duties, powers, purposes, responsibilities, and jurisdiction vested by the Act in each of the resulting departments. The assumption by each department shall not in any way affect the rights of the parties to the agreement.
- D. As a result of the departmental reorganization discussed above, various CDHS programs may experience a physical relocation, change in personnel, change in procedures, or other effect. If this agreement is impacted by SB 162, CDHS reserves the right, without initiation of a formal amendment, to issue one or more written notices to the Contractor supplying alternate information and/or instructions regarding invoicing, document addressing, personnel changes, and/or other procedural changes.

Contractor's Release

Instructions to Contractor:

With final invoice(s) submit one (1) original and one (1) copy. The original must bear the original signature of a person authorized to bind the Contractor. The additional copy may bear photocopied signatures.

Submission of Final Invoice

Pursuant to **contract number** _____ entered into between the State of California Department of Health Services (CDHS) and the Contractor (identified below), the Contractor does acknowledge that final payment has been requested via **invoice number(s)** _____, in the **amount(s) of \$** _____ and **dated** _____.
If necessary, enter "See Attached" in the appropriate blocks and attach a list of invoice numbers, dollar amounts and invoice dates.

Release of all Obligations

By signing this form, and upon receipt of the amount specified in the invoice number(s) referenced above, the Contractor does hereby release and discharge the State, its officers, agents and employees of and from any and all liabilities, obligations, claims, and demands whatsoever arising from the above referenced contract.

Repayments Due to Audit Exceptions / Record Retention

By signing this form, Contractor acknowledges that expenses authorized for reimbursement does not guarantee final allowability of said expenses. Contractor agrees that the amount of any sustained audit exceptions resulting from any subsequent audit made after final payment will be refunded to the State.

All expense and accounting records related to the above referenced contract must be maintained for audit purposes for no less than three years beyond the date of final payment, unless a longer term is stated in said contract.

Recycled Product Use Certification

By signing this form, Contractor certifies under penalty of perjury that a minimum of 0% unless otherwise specified in writing of post consumer material, as defined in the Public Contract Code Section 12200, in products, materials, goods, or supplies offered or sold to the State regardless of whether it meets the requirements of Public Contract Code Section 12209. Contractor specifies that printer or duplication cartridges offered or sold to the State comply with the requirements of Section 12156(e).

Reminder to Return State Equipment/Property (If Applicable)

(Applies only if equipment was provided by CDHS or purchased with or reimbursed by contract funds)

Unless CDHS has approved the continued use and possession of State equipment (as defined in the above referenced contract) for use in connection with another CDHS agreement, Contractor agrees to promptly initiate arrangements to account for and return said equipment to CDHS, at CDHS's expense, if said equipment has not passed its useful life expectancy as defined in the above referenced contract.

Patents / Other Issues

By signing this form, Contractor further agrees, in connection with patent matters and with any claims that are not specifically released as set forth above, that it will comply with all of the provisions contained in the above referenced contract, including, but not limited to, those provisions relating to notification to the State and related to the defense or prosecution of litigation.

ONLY SIGN AND DATE THIS DOCUMENT WHEN ATTACHING TO THE FINAL INVOICE

Contractor's Legal Name (as on contract): _____

Signature of Contractor or Official Designee: _____ Date: _____

Printed Name/Title of Person Signing: _____

CDHS Distribution: Accounting (Original) Program

HIPAA Business Associate Addendum

I. Recitals – HIGH RISK

- A. This Contract (Agreement) has been determined to constitute a business associate relationship under the Health Insurance Portability and Accountability Act ("HIPAA") and its implementing privacy and security regulations at 45 CFR Parts 160 and 164 ("the HIPAA regulations:").
- B. The California Department of Health Services ("CDHS") wishes to disclose to Business Associate certain information pursuant to the terms of this Agreement, some of which may constitute Protected Health Information ("PHI").
- C. "Protected Health Information" or "PHI" means any information, whether oral or recorded in any form or medium that relates to the past, present, or future physical or mental condition of an individual, the provision of health and dental care to an individual, or the past, present, or future payment for the provision of health and dental care to an individual; and that identifies the individual or with respect to which there is a reasonable basis to believe the information can be used to identify the individual. PHI shall have the meaning given to such term under HIPAA and HIPAA regulations, as the same may be amended from time to time.
- D. "Security Incident" means the attempted or successful unauthorized access, use, disclosure, modification, or destruction of PHI, or confidential data that is essential to the ongoing operation of the Business Associate's organization and intended for internal use; or interference with system operations in an information system.
- E. As set forth in this Agreement Contractor, here and after, is the Business Associate of CDHS that provides services, arranges, performs or assists in the performance of functions or activities on behalf of CDHS and creates, receives, maintains, transmits, uses or discloses PHI.
- F. CDHS and Business Associate desire to protect the privacy and provide for the security of PHI created, received, maintained, transmitted, used or disclosed pursuant to this Agreement, in compliance with HIPAA and HIPAA regulations and other applicable laws.
- G. The purpose of the Addendum is to satisfy certain standards and requirements of HIPAA and the HIPAA regulations.
- H. The terms used in this Addendum, but not otherwise defined, shall have the same meanings as those terms in the HIPAA regulations.

In exchanging information pursuant to this Agreement, the parties agree as follows:

1. Permitted Uses and Disclosures of PHI by Business Associate

- A. ***Permitted Uses and Disclosures.*** Except as otherwise indicated in this Addendum, Business Associate may use or disclose PHI only to perform functions, activities or services specified in this Agreement, for, or on behalf of CDHS, provided that such use or disclosure would not violate the HIPAA regulations, if done by CDHS.
- B. ***Specific Use and Disclosure Provisions.*** Except as otherwise indicated in this Addendum, Business Associate may:
 - 1) ***Use and disclose for management and administration.*** Use and disclose PHI for the proper management and administration of the Business Associate or to carry out the legal responsibilities of the Business Associate, provided that disclosures are required by law, or the Business Associate obtains reasonable assurances from the person to whom the information is disclosed that it will remain confidential and will be used or further disclosed only as required by law or for the purpose

HIPAA Business Associate Addendum

for which it was disclosed to the person, and the person notifies the Business Associate of any instances of which it is aware that the confidentiality of the information has been breached.

- 2) **Provision of Data Aggregation Services.** Use PHI to provide data aggregation services to CDHS. Data aggregation means the combining of PHI created or received by the Business Associate on behalf of CDHS with PHI received by the Business Associate in its capacity as the Business Associate of another covered entity, to permit data analyses that relate to the health care operations of CDHS.

2. Responsibilities of Business Associate

Business Associate agrees:

- A. **Nondisclosure.** Not to use or disclose Protected Health Information (PHI) other than as permitted or required by this Agreement or as required by law.
- B. **Safeguards.** To implement administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of the PHI, including electronic PHI, that it creates, receives, maintains, uses or transmits on behalf of CDHS; and to prevent use or disclosure of PHI other than as provided for by this Agreement. Business Associate shall develop and maintain a written information privacy and security program that includes administrative, technical and physical safeguards appropriate to the size and complexity of the Business Associate's operations and the nature and scope of its activities, and which incorporates the requirements of section C, Security, below. Business Associate will provide CDHS with its current and updated policies.
- C. **Security.** To take any and all steps necessary to ensure the continuous security of all computerized data systems containing PHI, and provide data security procedures for the use of CDHS at the end of the contract period. These steps shall include, at a minimum:
 - 1) Complying with all of the data system security precautions listed in this Agreement or in an Exhibit incorporated into this Agreement;
 - 2) Achieving and maintaining compliance with the HIPAA Security Rule (45 CFR Parts 160 and 164), as necessary in conducting operations on behalf of CDHS under this Agreement;
 - 3) Providing a level and scope of security that is at least comparable to the level and scope of security established by the Office of Management and Budget in OMB Circular No. A-130, Appendix III- Security of Federal Automated Information Systems, which sets forth guidelines for automated information systems in Federal agencies; and
 - 4) Complying with the safeguard provisions in the Department's Information Security Policy, embodied in Health Administrative Manual (HAM), sections 6-1000 et seq. and in the Security and Risk Management Policy in the Information Technology Section of the State Administrative Manual (SAM), sections 4840 et seq., in so far as the security standards in these manuals apply to Business Associate's operations. In case of a conflict between any of the security standards contained in any of these enumerated sources of security standards, the most stringent shall apply. The most stringent means that safeguard which provides the highest level of protection to PHI from unauthorized disclosure. Further, Business Associate must comply with changes to these standards that occur after the effective date of this Agreement.

Business Associate shall designate a Security Officer to oversee its data security program who shall be responsible for carrying out the requirements of this section and for communicating on security matters with CDHS.

HIPAA Business Associate Addendum

- D. **Mitigation of Harmful Effects.** To mitigate, to the extent practicable, any harmful effect that is known to Business Associate of a use or disclosure of PHI by Business Associate or its subcontractors in violation of the requirements of this Addendum.
- E. **Business Associate's Agents.** To ensure that any agents, including subcontractors, to whom Business Associate provides PHI received from or created or received by Business Associate on behalf of CDHS, agree to the same restrictions and conditions that apply to Business Associate with respect to such PHI, including implementation of reasonable and appropriate administrative, physical, and technical safeguards to protect such PHI; and to incorporate, when applicable, the relevant provisions of this Addendum into each subcontract or subaward to such agents or subcontractors.
- F. **Availability of Information to CDHS and Individuals.** To provide access as CDHS may require, and in the time and manner designated by CDHS (upon reasonable notice and during Business Associate's normal business hours) to PHI in a Designated Record Set, to CDHS (or, as directed by CDHS), to an Individual, in accordance with 45 CFR Section 164.524. Designated Record Set means the group of records maintained for CDHS that includes medical, dental and billing records about individuals; enrollment, payment, claims adjudication, and case or medical management systems maintained for CDHS health plans; or those records used to make decisions about individuals on behalf of CDHS. Business Associate shall use the forms and processes developed by CDHS for this purpose and shall respond to requests for access to records transmitted by CDHS within fifteen (15) calendar days of receipt of the request by producing the records or verifying that there are none.
- G. **Amendment of PHI.** To make any amendment(s) to PHI that CDHS directs or agrees to pursuant to 45 CFR Section 164.526, in the time and manner designated by CDHS.
- H. **Internal Practices.** To make Business Associate's internal practices, books and records relating to the use and disclosure of PHI received from CDHS, or created or received by Business Associate on behalf of CDHS, available to CDHS or to the Secretary of the U.S. Department of Health and Human Services in a time and manner designated by CDHS or by the Secretary, for purposes of determining CDHS's compliance with the HIPAA regulations.
- I. **Documentation of Disclosures.** To document and make available to CDHS or (at the direction of CDHS) to an Individual such disclosures of PHI, and information related to such disclosures, necessary to respond to a proper request by the subject Individual for an accounting of disclosures of PHI, in accordance with 45 CFR 164.528.
- J. **Notification of Breach.** During the term of this Agreement:
- 1) **Discovery of Breach.** To notify CDHS **immediately by telephone call plus email or fax** upon the discovery of breach of security of PHI in computerized form if the PHI was, or is reasonably believed to have been, acquired by an unauthorized person; or **within 24 hours by email or fax** of any suspected security incident, intrusion or unauthorized use or disclosure of PHI in violation of this Agreement and this Addendum, or potential loss of confidential data affecting this Agreement. Notification shall be provided to the CDHS contract manager, the CDHS Privacy Officer and the CDHS Information Security Officer. If the incident occurs after business hours or on a weekend or holiday and involves electronic PHI, notification shall be provided by calling the CDHS ITSD Help Desk. Business Associate shall take:
 - i. Prompt corrective action to mitigate any risks or damages involved with the breach and to protect the operating environment and
 - ii. Any action pertaining to such unauthorized disclosure required by applicable Federal and State laws and regulations.

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- 2) **Investigation of Breach.** To immediately investigate such security incident, breach, or unauthorized use or disclosure of PHI or confidential data. Within 72 hours of the discovery, to notify the CDHS contract manager(s), the CDHS Privacy Officer, and the CDHS Information Security Officer of:
- What data elements were involved and the extent of the data involved in the breach,
 - A description of the unauthorized persons known or reasonably believed to have improperly used or disclosed PHI or confidential data,
 - A description of where the PHI or confidential data is believed to have been improperly transmitted, sent, or utilized,
 - A description of the probable causes of the improper use or disclosure; and
 - Whether Civil Code sections 1798.29 or 1798.82 or any other federal or state laws requiring individual notifications of breaches are triggered.
- 3) **Written Report.** To provide a written report of the investigation to the CDHS contract managers, the CDHS Privacy Officer, and the CDHS Information Security Officer within ten (10) working days of the discovery of the breach or unauthorized use or disclosure. The report shall include, but not be limited to, the information specified above, as well as a full, detailed corrective action plan, including information on measures that were taken to halt and/or contain the improper use or disclosure.
- 4) **Notification of Individuals.** To notify individuals of the breach or unauthorized use or disclosure when notification is required under state or federal law and to pay any costs of such notifications, as well as any costs associated with the breach. The CDHS contract manager, the CDHS Privacy Officer, and the CDHS Information Security Officer shall approve the time, manner and content of any such notifications.
- 5) **CDHS Contact Information.** To direct communications to the above referenced CDHS staff, the Contractor shall initiate contact as indicated herein. CDHS reserves the right to make changes to the contact information below by giving written notice to the Contractor. Said changes shall not require an amendment to this Agreement or Addendum.

| CDHS Contract Manager | CDHS Privacy Officer | CDHS Information Security Officer |
|---|---|---|
| See Provision 4 of Exhibit A for Contract Manager information | Privacy Officer c/o: Office of Legal Services California Department of Health Services P.O. Box 997413, MS 0011 Sacramento, CA 95899-7413 Email: privacyofficer@dhs.ca.gov Telephone: (916) 445-4646 | Information Security Officer Information Security Office P.O. Box 997413, MS 6302 Sacramento, CA 95899-7413 Email: dhsiso@dhs.ca.gov Telephone: ITSD Help Desk (916) 440-7000 or (800) 579-0874 |

- K. **Employee Training and Discipline.** To train and use reasonable measures to ensure compliance with the requirements of this Addendum by employees who assist in the performance of functions or activities on behalf of CDHS under this Agreement and use or disclose PHI; and discipline such employees who intentionally violate any provisions of this Addendum, including by termination of employment. In complying with the provisions of this section K, Business Associate shall observe the following requirements:

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- 1) Business Associate shall provide information privacy and security training, at least annually, at its own expense, to all its employees who assist in the performance of functions or activities on behalf of CDHS under this Agreement and use or disclose PHI.
- 2) Business Associate shall require each employee who receives information privacy and security training to sign a certification, indicating the employee's name and the date on which the training was completed.
- 3) Business Associate shall retain each employee's written certifications for CDHS inspection for a period of three years following contract termination.

3. Obligations of CDHS

CDHS agrees to:

- A. **Notice of Privacy Practices.** Provide Business Associate with the Notice of Privacy Practices that CDHS produces in accordance with 45 CFR 164.520, as well as any changes to such notice. Visit this Internet address to view the most current Notice of Privacy Practices:
<http://www.dhs.ca.gov/privacyoffice>.
- B. **Permission by Individuals for Use and Disclosure of PHI.** Provide the Business Associate with any changes in, or revocation of, permission by an Individual to use or disclose PHI, if such changes affect the Business Associate's permitted or required uses and disclosures.
- C. **Notification of Restrictions.** Notify the Business Associate of any restriction to the use or disclosure of PHI that CDHS has agreed to in accordance with 45 CFR 164.522, to the extent that such restriction may affect the Business Associate's use or disclosure of PHI.
- D. **Requests Conflicting with HIPAA Rules.** Not request the Business Associate to use or disclose PHI in any manner that would not be permissible under the HIPAA regulations if done by CDHS.

4. Audits, Inspection and Enforcement

From time to time, CDHS may inspect the facilities, systems, books and records of Business Associate to monitor compliance with this Agreement and this Addendum. Business Associate shall promptly remedy any violation of any provision of this Addendum and shall certify the same to the CDHS Privacy Officer in writing. The fact that CDHS inspects, or fails to inspect, or has the right to inspect, Business Associate's facilities, systems and procedures does not relieve Business Associate of its responsibility to comply with this Addendum, nor does CDHS's:

- A. Failure to detect or
- B. Detection, but failure to notify Business Associate or require Business Associate's remediation of any unsatisfactory practices constitute acceptance of such practice or a waiver of CDHS's enforcement rights under this Agreement and this Addendum.

5. Termination

- A. **Termination for Cause.** Upon CDHS's knowledge of a material breach of this Addendum by Business Associate, CDHS shall:
 - 1) Provide an opportunity for Business Associate to cure the breach or end the violation and terminate this Agreement if Business Associate does not cure the breach or end the violation within the time specified by CDHS;

HIPAA Business Associate Addendum

- 2) Immediately terminate this Agreement if Business Associate has breached a material term of this Addendum and cure is not possible; or
- 3) If neither cure nor termination is feasible, report the violation to the Secretary of the U.S. Department of Health and Human Services.

- B. **Judicial or Administrative Proceedings.** Business Associate will notify CDHS if it is named as a defendant in a criminal proceeding for a violation of HIPAA. CDHS may terminate this Agreement if Business Associate is found guilty of a criminal violation of HIPAA. CDHS may terminate this Agreement if a finding or stipulation that the Business Associate has violated any standard or requirement of HIPAA, or other security or privacy laws is made in any administrative or civil proceeding in which the Business Associate is a party or has been joined.
- C. **Effect of Termination.** Upon termination or expiration of this Agreement for any reason, Business Associate shall return or destroy all PHI received from CDHS (or created or received by Business Associate on behalf of CDHS) that Business Associate still maintains in any form, and shall retain no copies of such PHI or, if return or destruction is not feasible, shall continue to extend the protections of this Addendum to such information, and shall limit further use of such PHI to those purposes that make the return or destruction of such PHI infeasible. This provision shall apply to PHI that is in the possession of subcontractors or agents of Business Associate.

6. Miscellaneous Provisions

- A. **Disclaimer.** CDHS makes no warranty or representation that compliance by Business Associate with this Addendum, HIPAA or the HIPAA regulations will be adequate or satisfactory for Business Associate's own purposes or that any information in Business Associate's possession or control, or transmitted or received by Business Associate, is or will be secure from unauthorized use or disclosure. Business Associate is solely responsible for all decisions made by Business Associate regarding the safeguarding of PHI.
- B. **Amendment.** The parties acknowledge that federal and state laws relating to electronic data security and privacy are rapidly evolving and that amendment of this Addendum may be required to provide for procedures to ensure compliance with such developments. The parties specifically agree to take such action as is necessary to implement the standards and requirements of HIPAA, the HIPAA regulations and other applicable laws relating to the security or privacy of PHI. Upon CDHS's request, Business Associate agrees to promptly enter into negotiations with CDHS concerning an amendment to this Addendum embodying written assurances consistent with the standards and requirements of HIPAA, the HIPAA regulations or other applicable laws. CDHS may terminate this Agreement upon thirty (30) days written notice in the event:
- 1) Business Associate does not promptly enter into negotiations to amend this Addendum when requested by CDHS pursuant to this Section or
 - 2) Business Associate does not enter into an amendment providing assurances regarding the safeguarding of PHI that CDHS in its sole discretion, deems sufficient to satisfy the standards and requirements of HIPAA and the HIPAA regulations.
- C. **Assistance in Litigation or Administrative Proceedings.** Business Associate shall make itself and any subcontractors, employees or agents assisting Business Associate in the performance of its obligations under this Agreement, available to CDHS at no cost to CDHS to testify as witnesses, or otherwise, in the event of litigation or administrative proceedings being commenced against CDHS, its directors, officers or employees based upon claimed violation of HIPAA, the HIPAA regulations or other laws relating to security and privacy, which involves inactions or actions by the Business Associate, except where Business Associate or its subcontractor, employee or agent is a named adverse party.

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- D. **No Third-Party Beneficiaries.** Nothing express or implied in the terms and conditions of this Addendum is intended to confer, nor shall anything herein confer, upon any person other than CDHS or Business Associate and their respective successors or assignees, any rights, remedies, obligations or liabilities whatsoever.
- E. **Interpretation.** The terms and conditions in this Addendum shall be interpreted as broadly as necessary to implement and comply with HIPAA, the HIPAA regulations and applicable state laws. The parties agree that any ambiguity in the terms and conditions of this Addendum shall be resolved in favor of a meaning that complies and is consistent with HIPAA and the HIPAA regulations.
- F. **Regulatory References.** A reference in the terms and conditions of this Addendum to a section in the HIPAA regulations means the section as in effect or as amended.
- G. **Survival.** The respective rights and obligations of Business Associate under Section 6.C of this Addendum shall survive the termination or expiration of this Agreement.
- H. **No Waiver of Obligations.** No change, waiver or discharge of any liability or obligation hereunder on any one or more occasions shall be deemed a waiver of performance of any continuing or other obligation, or shall prohibit enforcement of any obligation, on any other occasion.